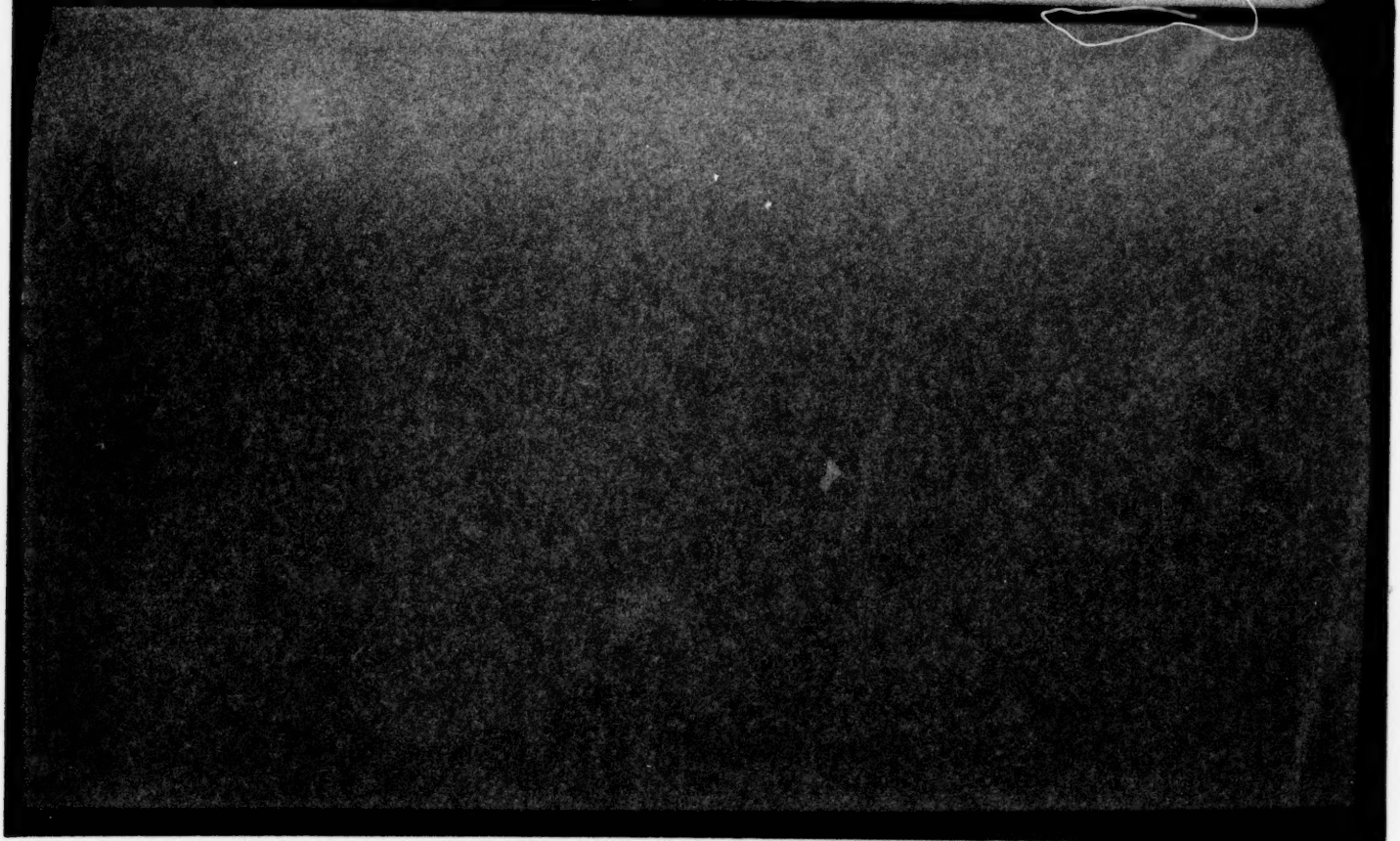

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No.

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

VOLUME II

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Q. Yes, I am speaking about your investments of all kinds.

Mr. Folonie: Invested assets, I think.

Mr. Barker: No, I am not referring to your capital now. I am talking about the money which you receive and invest.

The Witness: On the unearned premium fund?

Q. Yes. If you charge us our proportion of the expenses of handling that, don't you think we ought to be able to consider your earnings from it in fixing a rate?

A. No, I don't.

Q. Don't think that?

A. No, sir.

[fol. 1013] Q. Now, then, the money which you receive in you receive one, two, three, four, five and six years in advance and so forth?

A. Yes—not six years; five years.

Q. You don't write over five?

A. One, three and five, I should say.

Q. Now, you receive this money in advance?

A. Yes.

Q. When you receive it do you set aside as an unearned premium reserve, set it aside as an unearned premium reserve?

A. We do carry it in our statement as a liability. We set it aside as a liability.

Q. Now, all of your unearned premiums are set aside in a separate fund and constitute what you call your unearned premium reserve?

A. In our statement, yes.

Q. I am talking about actually.

A. Well, you mean that the revenues are set aside and earmarked as applying only to the unearned premium fund?

Q. No. I say, do you take your unearned premiums—moneys—receive a hundred dollars today and only earn ten dollars of it. You have got ninety dollars. Do you take that ninety dollars and the other money and set it aside in a special fund to be known as the unearned premium reserve, or do you mingle it with all your funds?

A. We set it aside in our annual statement as a separate rate liability and set it in our books that way.

Q. What becomes of the money, though?

A. It is invested as any other funds of the company are invested.

Q. Then when invested in the form of securities are those securities set to one side and marked and known as the unearned premium reserve?

[fol. 1014] A. I just testified they are not so earmarked.

Q. Now, then, unearned premiums do not belong to you, do they?

A. Not until they are earned, no.

Q. Until they are earned they belong to the policyholders?

A. Yes.

Q. And you are the trustee for them?

A. We are the custodian of it.

Q. A trustee?

Mr. Leahy: He is calling for a legal conclusion. The courts have passed upon that matter.

The Referee: I think that calls for a conclusion of law; and the witness has not shown himself so qualified.

Mr. Leahy: Yes.

To which action and ruling of the referee the defendants by counsel then and there at the time duly excepted and still except.

Mr. Barker:

Q. I want to ask you, Mr. Bartow, as an insurance official, president of one of the great companies, whether or not you know that insurance is impressed with a public trust and that it is subject to regulation?

Mr. Leahy: That is also a conclusion of law. Might cite the case of Lewis v. German Alliance. This witness might say he thinks the Supreme Court will recall it.

The Witness: I have heard it here.

The Referee: The witness may answer as to his personal knowledge.

[fol. 1015] To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still except.

A. I have heard it.

Mr. Barker: I am not asking this witness to testify as a lawyer.

A. I have so heard it.

Q. I am asking you now not as a lawyer and for no legal conclusion from you but as the president of this insurance company whether or not you and your company treat yourselves as trustees of this fund which you say you have not earned?

Mr. Leahy: One minute. You mean trustees for the stockholders?

Mr. Barker: No, sir, for the policy holders.

Mr. Leahy: Well, that is a legal conclusion and we object to it. He is asked an assumption on a legal conclusion.

Mr. Barker: I want to know how your company treats it.

The Referee: Objection overruled.

To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still except.

A. I consider that we are custodians of that fund, with full knowledge of our responsibility.

Mr. Barker:

Q. I am asking you if your company conducts itself and treats this money as holding it as trustee for the policy holders?

A. I couldn't say that we consider that we are trustee. [fol. 1016] I say that we are responsible custodians of that money. We certainly could not spend it.

Q. Your unearned premiums are subject to return only in case of cancellation?

A. Yes.

Q. Now, about what per cent has been your experience of the cancellations in your company in the last five years?

A. I couldn't tell you.

Q. Run about five per cent?

A. I couldn't tell you.

Q. They are small, at least?

Mr. Leahy: Well, he says he don't know.

The Referee: Overruled.

To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still except.

Mr. Barker:

Q. Well, I want to find out. I will ask him an ordinary way to get at it. You are president of this company?

A. Yes.

Q. Do you know whether cancellations are as much as five per cent or not?

A. Well, I think they are more.

Q. Do you think they would be as much as ten per cent?

A. I think they are.

Q. Do you think they would be as much as fifteen per cent?

A. I think they would be.

Q. Do you think they would be as much as twenty per cent?

A. I would have to consult our records.

Q. Now, in case a loss occurs amounting to the amount of your premium, your premium is earned, is it?

A. If it is a total loss, yes.

[fol. 1917] Q. Well, suppose you have got a nine hundred dollar risk and you have collected ten dollars on it and suppose the loss is five hundred dollars. It is paid, isn't it?

A. He is legally entitled to return premium on four hundred dollars unless in the settlement it is understood he would surrender his policy in view of the compromise terms of the settlement.

Q. This unearned premium reserve which you speak of is held then against cancellations?

A. Cancellations and losses, yes.

Q. Do you use it to pay losses with?

A. No, but it is held against the request of the assured for the return of the premium.

Q. And only for that purpose?

A. Well, it would be also to cover losses. We have got to carry out the liability and pay the losses, surely.

Q. Then do you tell me you carry your insurance reserve for the purpose of paying losses with it?

A. We have got to cover surely—it has got to be sufficient to extinguish all liability and pay what losses may occur under it.

Q. If you carry it for that purpose you then charge it to your company as an asset, for the purpose of paying losses, don't you?

A. We charge it as a liability.

Q. But if you have it for the purpose of paying losses it is an asset, isn't it?

A. Well, we might have to pay it all out.

Q. Then it would be an asset?

A. We call it a liability.

[fol. 1018] Q. Well, I know.

A. Well, I don't call it an asset. If it is a liability it may have to be paid out.

Q. It is there for two purposes: first, in case of cancellation, to return to the policy holder?

A. Yes.

Q. And second it is there to pay losses with if you have to use it?

A. Yes.

Q. And if it is there to pay losses with and you have a right to pay losses with it, isn't it an asset of your company?

A. I don't so regard it. We carry it as a liability of the company.

(Whereupon a recess of ten minutes was taken after which the following proceedings were had):

The Referee: Proceed, gentlemen.

Mr. Barker:

Q. Mr. Bartow, if your company takes in, in premiums in Missouri during a given year say one hundred thousand dollars, let us assume that your losses were fifty thousand dollars and let us assume that your expenses were forty thousand dollars, leaving ten thousand dollars over and above your losses and expenses; expenses of all kinds. Would you estimate that you had earned ten thousand dollars in Missouri in that year?

A. No.

Q. How much would you estimate you had earned in Missouri?

A. Well, you would have to take off the unearned premiums from your premiums and estimate what your losses were, and your earned premiums, and then you would find out that you had lost money on that basis.

Q. Find out that although you took in ten thousand dollars in Missouri more than your expense and losses that [fol. 1019] you had lost money?

A. Yes, because that is simply a trading balance. You have got to set up a liability against that which I have been talking about, which is this unearned premium reserve.

Q. Notwithstanding now, in considering your answer, that the unearned premiums which you have originally on the one hand are earning you money on investments—are you considering that?

A. I am considering that. I would say that I believe that those—the interest on the unearned premium fund, that the company is entitled to the interest earnings.

Q. In other words—I realize that, but what I mean is this: that considering that you have your unearned premiums on the one hand, and that is bringing you in money.

A. Yes.

Q. That on the other hand you receive one hundred thousand dollars that year from Missouri, your expenses of all kinds and losses are ninety thousand dollars. You still have ten thousand dollars, with your unearned premiums invested. Don't you think it is fair to say that you earned ten thousand dollars in Missouri?

A. No.

Q. Don't you think the investments will take care of your unearned premiums? You can't impair that?

A. I don't think so.

Q. How can you impair your unearned premiums?

A. I don't understand your question. How do you mean, impair your unearned premiums?

Q. You say you want to use this ten thousand dollars in Missouri—must be put up as a reserve against your un- [fol. 1020] earned premiums. Now, your unearned premiums are intact and invested, aren't they?

A. Yes.

Q. No chance to impair that?

A. They may be impaired by calls of policyholders, or by losses.

Q. By one of the two, either one of the two might impair it?

A. Yes. We have got to be ready for it, and we have got to keep ourselves in sufficiently liquid shape financially to pay it when we are asked. And I say that is a liability.

Q. Have you considered further the question of apportioning a part of your capital to Missouri in accordance with the volume of business which you receive from Missouri?

A. We have not.

Q. What I mean is you have a three million dollar company?

A. Yes.

Q. Now, suppose Missouri produces one-tenth of the business of the United States for your company in any one year.

A. Yes.

Q. Wouldn't it be fair to apportion three hundred thousand dollars or one tenth of your capital to Missouri and figure your earnings or losses on that apportionment?

A. I don't believe so.

Q. Why not?

A. Well, because the capital of the company is concentrated here in this state. It is organized under the laws of the State of New York. It is available for all the policyholders in the United States, everywhere. We don't apportion a part of our capital to any state. Nor as a principle do I think it would be correct.

Q. When you are going to figure your profit and loss in Missouri, how is it possible to figure it if you do not figure [fol. 1021] it on your capital account?

A. You mean the interest upon our capital account?

Q. Yes.

A. Well, I don't think they are entitled to the interest on the capital account.

Q. Well, let me ask you this, which will perhaps straighten you out: Now, a corporation is either entitled to earn a return upon its capital stock or upon its investment. Those are the only two things known to you that it can earn a return on, isn't it?

A. From an investment standpoint, yes.

Q. Yes. In other words, it must either earn a return on its capital or it must earn a return on its investment?

A. Yes.

Q. Now, you have no investment in Missouri, have you?

A. No.

Q. Then you must apportion your capital to Missouri if you want to determine a fair return for Missouri, must you not?

A. I don't think so; not in my way of looking at it, from an underwriting standpoint.

Q. Well, I will make myself clear. Suppose that instead of being president of a fire insurance company you were president of a telephone company over here in this city.

A. Yes.

Q. And your company was capitalized at a hundred thousand dollars, paid up. Now, at the end of the year, if you wanted to figure the profit or loss, earnings or losses, you would figure it against your capital stock, wouldn't you?

A. Yes.

Q. Now, if you had invested, however, instead of a hundred thousand dollars, a million dollars worth of property, [fol. 1022] invested in that city, you would figure your earnings on your investment, would you not?

A. Yes, sir.

Q. Now, you can't figure earnings on your investments in Missouri because you have none?

A. Yes.

Q. Then you must figure on your capital, must you not?

A. This capital is subject to the vicissitudes of our business in all parts of North America, including Canada and Cuba and every other state in the Union.

Q. Yes; and if your telephone company was furnishing service to four or five outlying towns your capital in your home town would be just as subject to a loss of a leg by lightning in one of those towns as in your own town, wouldn't it?

A. Yes, they—tangible property invested in the state.

Q. And you have no money invested in Missouri?

A. No.

Q. Therefore you must turn to your capital to figure your earnings, must you not?

A. Yes.

Q. Do you know Mr. Alfred M. Best, the insurance authority?

A. Yes.

Mr. Folonie: Just a minute. We object to the double character of the question. Whether he knows him and whether he is an insurance authority we think should be separated.

Mr. Barker: He answered that he knew both.

The Witness: I don't subscribe wholly to the designation of an insurance authority. I know Mr. Best, he was a small lad in our office; brought up in our office.

[fol. 1023] Mr. Barker:

Q. He publishes works on insurance?

A. He does.

Q. He is considered an authority in the insurance field?

A. Well, I don't agree with him.

Q. Well, I understand that.

A. I will say I don't think he is an authority; not according to my lights, no.

Q. Well, some surgeon that believes in curing, he might not agree with you but you would agree that he was an authority, wouldn't you?

A. You are asking my opinion and I am answering.

Q. Well, he is recognized as an insurance authority, isn't he, throughout the insurance field?

A. No, I don't think he is.

Q. Did you testify in the Lockwood committee investigation?

A. No.

Q. Did you hear Mr. Best testify?

A. No.

Q. Did you read his testimony?

A. Some of it.

Q. Did you read this, "Experiences show that there is a very large profit in this liability reserve and that the law has required to be set apart for extra safety, of this reserve approximately one half is profit which is nowhere

shown upon the books of the company." Did you read that statement?

A. I read that, yes.

Q. Is that true?

A. I don't agree with him entirely, no.

Q. Now, there is a tremendous hidden profit in your unearned premiums, is there not, Mr. Bartow?

A. Well, I don't call it a hidden profit.

Q. It is not visible, is it?

A. Well, I don't call it a profit. I say that is a liability set up by the law and we have to obey it.

{fol. 1024} Q. I realize that, but there is a profit there which is not disclosed on your books, isn't there?

A. There may be.

Q. Well, you know as a matter of fact there must be.

A. No, I don't, as a matter of fact.

Q. Well, let's see. Your unearned premiums are invested?

A. Yes.

Q. And you receive something in return from those investments?

A. Yes.

Q. Now, what you receive you don't account for in your underwriting report at all, do you?

A. We make a statement of what our interest earnings are, of course.

Q. In your underwriting report?

A. Oh, no. You mean in calculating our underwriting results?

Q. Yes.

A. No.

Q. You don't treat your earnings, then, or interest on your unearned premiums in your underwriting activities at all, do you?

A. No.

Q. Most of that is a profit which is not disclosed. That is what Mr. Best means, isn't it?

A. I don't know what he meant. I only read his statement. It is a matter of opinion as to whether we should be entitled to it or not.

Q. (Reading:) "The income on that fund"—unearned premiums—"is being taken by the stock companies for

the stockholders. The income of the ten leading companies of the New York Exchange for 1919"—including your company—"from that fund was over ten million dollars and is approximately the same for every year. If the income from that reserve were credited to the fund they could re- [fol. 1025] duce the premiums about ten million dollars per annum if they wanted to." Did you read that and is it true?

A. I read that and as a mathematical statement if it were done it would of course be a credit against the rate structure, if it were done.

Q. Yes. It would result, if you gave the state credit for what he calls the hidden profits, you could reduce the fire insurance premiums in the United States ten million and over, couldn't you?

A. I don't subscribe to the statement it should be done. I would like to say at this moment if you will permit it that if the companies were not entitled to the interest upon the unearned premium fund the effect of that would be in my judgment to discourage capital entering the fire insurance business.

Now, it is a very hazardous business. There have been conflagrations and high forced adjustments upon share holders. Now, if you are to deprive the companies of the interest earnings on this interest reserve the returns to the share-holders are going to be less and it will have a tendency to discourage capital. These fire insurance companies are the basis of the credit of the nation. It is absolutely essential for the credit and for the insulation of values in the great cities of the country that they should be strong, solvent institutions, and I cannot see why we should subscribe to the principle that we are not entitled to the earnings upon that reserve if we are to keep and encourage capital in the business. Year by year they are drawn on, these enormous increases, in concentrated character, which re- [fol. 1026] quires the protection of strong companies. I am explaining why I think we are entitled to the earnings on this reserve.

The Referee: I understand you to mean, then, in other forms of speech, perhaps, insurance companies are now merely earning living wages?

A. Well, I would subscribe to that. I would not say perhaps a living wage. I think they are earning a sufficient capital to encourage capital to come into the business and stay.

The Referee: And no more than that?

A. Exactly. If you take something from the share holders like that you will discourage them. The business is very hazardous. There has got to be an exceptional return offered to the people who put their money in the business.

Mr. Barker:

Q. Your company has a capital stock of three million dollars?

A. Yes.

Q. How much of that capital stock is owned by the officers and directors of that corporation?

Mr. Leahy: That is immaterial and we object to it.

The Witness: I have no objection to answering it.

Mr. Barker: It is a matter of public record.

The Referee: Overruled.

To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.

The Witness:

A. The directors own fifteen shares apiece. That is all.

[fol. 1027] Mr. Barker:

Q. In other words, is it safe to assume that less than five per cent of your capital stock is owned by the officials, managers and directors?

A. Yes.

Q. So you have no incentive to build up your company because you get none of the returns from it?

A. Certainly we do, in interest upon our investment.

Q. Very nominal—five per cent is owned by the officers, directors and managers—is that about right?

A. Yes, about that.

Q. Do you know Mr. Henry Evans of the Continental?
A. Yes.
Q. Did you read Mr. Evans' testimony before the Lockwood investigating committee?
A. Some of it.
Q. Have you read this statement and do you agree with him as an official——

Mr. Folonie: We object to the question in seeking to inject testimony of others by putting it in this guise instead of inquiring in the form of——
Mr. Barker (interrupting): The only purpose is to ask him if he read it, and second if he subscribes to it.
Mr. Leahy: It isn't material anyway.
The Referee: The form of the question is objectionable in that it is double, and perhaps confusing.

Mr. Barker:

Q. I will ask you this question, then: with reference to investment; as to whether or not you read this part of Mr. Evans' testimony, and do you agree with it or do you not?

Mr. Leahy: We object to that.
The Referee: Overruled.

[fol. 1028] To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.

Mr. Barker:

Q. (Reading:) "The reason I believe that these companies should be allowed to invest in anything that they please is because their capital is their own and they are in no different relation to the public than anyone who sells any other kind of a commodity. I claim the unlimited right for our company to invest in anything that the board of directors thinks proper without restriction." Now do you agree to that?
A. No, I can't say I do.
Q. You don't go as far as Mr. Evans?
A. No, I don't.

Q. Mr. Evans was speaking for all of your companies including yours at that hearing?

A. I don't know whether he was or not. I never authorized him to answer for my company.

Q. Did you talk to him before he testified?

A. I did not.

Mr. Barker: I believe that is all.

The Referee:

Q. Mr. Bartow, out of what funds are dividends paid?

A. They are paid out of the surplus of the company, or its earnings. We have never paid more in my company than we have earned from our investments, in the matter of dividends.

Q. Would it be accurate to say dividends are paid only out of profits?

A. Absolutely, and I would like further to say that we have limited our dividends to the amount of our interest. In fact, many years we haven't paid out as much as we have earned in interest.

[fol. 1029] Q. I understand, then, that the dividends are paid only out of net profits?

A. Out of profits of the company.

Q. Net profits?

A. Net profits, yes.

Q. From what sources are the net profits derived?

A. They are derived from the interest earnings. The interest earnings from the underwriting earnings. We would pay it from our surplus if we had made an underwriting loss during the year. Any other company could pay it from its surplus.

By the Referee:

Q. Roughly speaking, then, the dividends are paid out of the net profits arising both from the underwriting business proper and from the investment end of the business?

A. Yes, sir.

Q. Are those two features kept separate, or all lumped together?

A. Well, for the purpose of knowing where we stand our underwriting is kept absolutely separate from our interest earnings.

Q. That is a matter of bookkeeping?

A. Yes sir.

Q. In point of fact, are those two funds kept——

A. (Interrupting.) They are not earmarked.

Q. Then they are all kept in one fund?

A. So far as the actual representing those funds, they are kept in one fund. They are not earmarked that "this is surplus" and "this is unearned premium" and "this is underwriting earnings."

Q. In other words, dividend checks are drawn against the same fund without regard from whence those profits came?

A. Yes.

[fol. 1030] Q. So that even if you suffered a loss in a given year from the investment end of the business you might nevertheless declare dividends and pay them out of the net profits from the underwriting end of the business?

A. Precisely. The accumulated surplus of the company can be used to stabilize the dividend period.

Q. And that of course would be equally true with reference to the net profits arising from the investment end rather than from the underwriting end of the business? Dividends could be paid out of that fund as well?

A. Yes.

Q. So when it comes to the point of paying dividends you are not concerned then about the source whence the profits came from, but only of their existence in sufficient quantities to pay?

A. We are as a financial policy.

Q. I mean insofar as the mere payment of the dividend is concerned.

A. The use of the cash comes out of the banking account and pays losses and expenses and everything else we have to pay on account of the company. We don't keep a separate account as representing interest earnings.

Mr. Folonie: You have got it all in a common pot although you know where it came from?

A. Precisely. We are trying to keep our expenses down.

Redirect examination by Mr. Leahy:

Q. Mr. Bartow, counsel for defendant asked you if in your opinion a conflagration was not a good thing for an insurance company; because following the San Francisco [fol. 1031] fire the lines of insurance were increased. As a matter of fact, business of all kinds has increased since 1906, has it not?

A. I should estimate that it has very considerably.

Q. Now, in rebuilding Tokio and Yokohama there will be a great deal of lumber and iron and steel and other commodities bought from this country and other countries, I presume. Do you think that such a catastrophe as that, because it results in some commerce, is a good thing for humanity?

A. I would not subscribe to that any more than I would about San Francisco.

Q. Well, if in the City of New York a pestilence broke out and thousands of people were caused to die thereby, which resulted in great business to undertakers, doctors and other persons, do you think for that reason that a pestilence is a good thing to have occasionally?

A. I certainly do not.

Q. Well, during the last war there were a great many ships destroyed by submarines and otherwise and that would necessitate and has necessitated the building of a great many ships. Do you think that for that reason the war is a thing to be desired?

A. I do not.

Q. Now, you were asked something about brokers. Who pays the brokers their commission?

A. If he is dealing with an agent the agent pays him out of the commission which he receives from the company.

Q. The company doesn't pay the broker?

A. Not unless he should deal with us directly here in New York over our counter. The great mass of the busi- [fol. 1032] ness coming to us throughout the country, the agent pays the broker.

Q. If the broker deals with you direct then you don't pay any agent a commission but the broker gets the commission?

A. Yes, that is correct. And that would only occur in New York, where our domicile is.

Q. You have stated that during the past ten years your company has earned about five per cent on its earned premiums. Have you earned anything in Missouri during the past ten years?

A. I don't think so. I have only the incurred losses here. I couldn't say but we possibly could have on our—very unprofitable record.

Q. Don't you know as a matter of fact that you have not had any profit in Missouri on your underwriting experience?

A. Yes.

Q. It is our position, is it not, that the unearned premium is as much the property of the company as any other property, subject however to cancellation?

A. Yes.

The Referee: Mr. Leahy, may I suggest to you—you might want to elucidate the thought with the witness, I don't know—this item: A claim for unearned premium arising by reason of the cancellation of the policy is merely a claim against the company?

Mr. Leahy: Yes.

The Referee: A claim for a loss assumed by reason of a fire is merely a claim against the company?

The Witness: Yes.

The Referee:

Q. Is there any difference between those two claims except the immaterial difference of the manner in which they arrived?

[fol. 1033] Mr. Leahy: Yes. That is what I was attempting to point out.

The Referee: In other words, all of the assets of the company would be subject to be levied upon if necessary to satisfy claims arising in either way?

Mr. Leahy: Exactly. That is our position, Your Honor.

By Mr. Leahy:

Q. Now you have heard the suggestion of the referee. As a matter of fact, any claim against your company would have to be met or you would be insolvent?

A. Yes, sir.

Q. And the mere right of the cancellation of the policies before the whole premium became earned, and that in the event that it was canceled there would be a claim upon it, differs only in degree from a claim that was made for a fine loss?

A. We would of course pledge everything the company had to meet its obligations. We would not default, no matter where the money came from.

Q. Yes. But it only differs in degree, name or bookkeeping?

A. Yes. The idea is these liabilities shall be established and the company shall have surplus beyond all liability so that beyond peradventure all claims can be met.

Q. The only difference between a claim for a loss that has occurred and the possibility of a claim that may come in for cancellation, that is, that one is actual and the other is potential?

Mr. Folonie: I might suggest to the court just this information, that under the decisions the loss claims would be given preferential treatmnt in case of insolvency over [fol. 1034] the return premium claims, but I assume that is a matter of law rather than information so I don't think we will ask the witness.

Mr. Leahy:

Q. Now, the twenty five or thirty per cent that Mr. Barker asked you about, a commission. That is not twenty five or thirty per cent of the face of the policy, is it?

A. Oh, no; twenty-five per cent of the premium.

Q. Yes. As a matter of fact, when a person takes out fire insurance he not alone takes it out with the idea of protecting himself against the hazard of loss by fire but for whatever protection he may receive in preventing fire, isn't that a fact, as much as——

A. (Interrupting.) Yes. Many, many many Manufacturers are delighted quite apart from the fact that they have the protection to avail themselves of the service of the company. We maintain at very great expense these inspection bureaus which are constantly engaged in examining those special hazards, with the idea of preventing a fire.

Q. Such as removing of waste?

A. Yes, and keeping premises cleaned up.

I would rather insure a risk in good condition than I would a risk unimproved at a high rate. A great deal has been said about the attitude of companies in this regard. I can only say I know of no manager whose policy is not one of improving the risks and bringing down the fire risk of the nation.

The Referee: Is the expense of maintaining that service treated as a general expense of the company?

A. It is segregated in a separate item. We know the total cost of maintaining all these various services.

[fol. 1035] The Referee: Is that treated as a general expense?

A. Yes, it is a part of our general expense.

Mr. Folonie:

Q. Goes into the underwriting item?

A. Yes, recorded in a separate item in the statement blank.

Mr. Leahy:

Q. And you help to maintain salvage corps?

A. Yes, sir; and the National Board for the Detection of Arson and Fire Prevention, and we print standards for buildings, and we have a model building and any town in the nation can apply to us and get the most enlightened thought of the modern building.

We are doing all we can to induce the cities to adopt these buildings, and it goes to reduce the fire insurance.

Q. Then if someone would assert that the insurance companies are delighted to see fires, they are mistaken?

A. That is absolutely false. I myself organized the Arson Committee of the national board. We have a corps of detectives who are engaged in nothing else but running down and taking up cases of incendiarism throughout the whole nation and taking cases which promise conviction and protecting the evidence and handing it, practically, to the civil authorities in a condition so that they can quickly handle it and enable them to try to get convictions.

Q. And investments are made with the idea of absolutely making secure your capital and adding as much as possible to you surplus?

A. Not only our capital but every one of our liabilities that require investment, unsettled losses or any other reserves.

[fol. 1036] Q. Now, Mr. Barker asked you at some length about you being a trustee. As a matter of fact, the only persons you are trustee for are the stockholders, isn't that a fact?

A. Well, if you call it a trustee. I don't know just whether I am a trustee: I know I have got enough responsibility to make me feel I am almost anything in the way of a responsible custodian.

Mr. Leahy: That is all.

Recross-examination by Mr. Baker:

Q. Mr. Bartow, don't you know or do you know that within the last ten years the president of one of the biggest insurance companies of the United States testified under oath that the insurance companies welcome a conflagration?

A. I don't know it.

Q. You didn't know that?

A. No.

Q. Well, I will produce it for you and give you a copy of his testimony. You don't agree with him?

Mr. Leahy: Who is it?

Mr. Barker: I will produce it.

Now, Mr. Folonie, you said you wanted me to give you the names of anybody I wanted. I will say now that I want Mr. Henry Evans, chairman of the Board of Directors of the Continental Fire Insurance Company and other companies known as the Evans group; and I want Mr. Frederick C. Buswell, vice president of the Home Insurance Company—or the president of that company.

Mr. Folonie: Very well.

(Witness excused.)

[fol. 1037] The Referee: We will adjourn now until ten o'clock tomorrow morning, to meet at this place at that time.

(Whereupon an adjournment was taken until the following day at ten o'clock A. M., at the same place, at which time

and place parties again reconvened and the following proceedings were had:)

(No witnesses being available, the further taking of testimony in the above entitled cause was continued until the following Monday, the 15th day of October, A. D. 1923, at which time parties reconvened at the same place and the following proceedings were had:)

Appearances: For the plaintiffs, Mr. Folonie, Mr. Hogsett, Mr. Leahy and Mr. Cogswell; for the defendants, Mr. Floyd Jacobs, Mr. John T. Barker.

The Referee: Are you ready to proceed, gentlemen?

Mr. Barker: Let me say now that I want to call for the following men: Mr. Henry Evans, of the Home, Mr. E. C. Jamison of the Globe, Mr. Buswell of the Home, Mr. Snow of the Home. The president of the Glen Falls; the president of the Hartford Company, and the president of the Aetna. Mr. Willis O. Robb, Manager of the New York Fire Insurance Exchange.

The Referee: Are we now ready to proceed?

Mr. Folonie: Yes.

[fol. 1038] Wilfred Kurth, called as a witness on behalf of the plaintiffs, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. Wilfred Kurth.

Q. What is your business, please?

A. Vice-president and secretary of the Home Insurance Company, New York.

Q. How long have you been connected with the business of fire insurance?

A. 32 years.

Q. In what capacities?

A. Clerk in a local agency and examiner in head office, special agent, supervisor and secretary.

Q. State there particularly the general nature of the duties incident to those various positions?

A. I started in the local agency in Hartford, policy clerk, collection work, bookkeeper and general factotum; only

clerk in the local agency. Further five years—I was there five years, and then went into the head office as the examiner, that is, passing on the desirability of risks, examining daily reports and mapping, and checking and generally examiner's duties. Then as special agent traveling, appointing agents, inspecting risks and adjusting losses.

Supervisor—then I came to New York as supervisor for the Home, that is what you might call a chief examiner; did some traveling and appointing of agents for the Home, making up annual statements, tax returns—in addition to the underwriting work.

[fol. 1039] And then as secretary and now as vice-president and secretary.

Q. How long has the Home Insurance Company been in business?

A. Since 1853.

Q. What general lines of insurance are transacted by that company?

A. Fire, marine, and what we call the allied lines, automobile, windstorm, hail, registered mail, tourist baggage, rain.

Q. What does the term inland navigation as it is used in your business usually signify, or what does it include as the term is used in your business?

A. We include the mail insurance, registered mail and parcel post, tourist baggage, transit by automobile insurance, and railroad common carriers' liability.

Q. Term inland navigation doesn't have in contemplation therefore carriage by water, as the term might imply to one a stranger in the business?

A. Except to a very minor extent—river transportation. We have practically none of that.

Q. But these other forms you have just mentioned first as included within it are not limited to carrier by water at all but carried by various means?

A. Not at all.

Q. And in what classification was the automobile business thrown, as your business was conducted, at least in the earlier stages of automobile riding?

A. Originally in the inland transportation.

Q. And has it in late years since it has reached larger proportions been put in a class by itself?

A. Entirely segregated, in a separate department.

[fol. 1040] Q. What are the parts of the executive duties incident to the business of your company which comes under your particular supervision and care?

A. I supervise the Pacific and foreign department of the underwriting.

The Referee: Pacific and foreign, did you say?

The Witness: Pacific and foreign—that is, the Pacific States and then Canada and Europe and South America—foreign parts.

Q. When you say the underwriting you refer to that activity of your company and of the writing and acquiring business as distinguished from that activity of investing and re-investing its funds?

A. It is entirely separate from the financial end.

Q. In the method in which the business in conducted in the Home Insurance Company are the two activities of your company kept entirely distinct and separate, that is, the investment end of the business and the underwriting end of the business?

A. Yes. We have what is known as the financial vice-president to look after the investment of funds. He has help, of course, in the nature of clerical assistance.

Q. And are those expenses that are incident to the investment end of your business, by way of the salary of that officer and the clerical help assisting him, kept distinct from your underwriting expenses?

A. They are not separated on our books, but they are readily ascertainable.

Q. That is, they are separable so that they are readily or can be readily divided?

A. Yes.

[fol. 1041] Q. And do you have knowledge whether the figures which have been filed in this particular case before the court, whether they are in fact separated in those figures?

A. You mean the investment returns?

Q. No. Whether in the figures which have been filed with the court in this particular law suit which were gathered by Mr. Beaty in conjunction with the company, whether the expenses were eliminated from those figures—do you know personally?

A. I don't know about that end at all.

Q. That is a matter that has not come to your personal attention?

A. No.

Q. In the business of your company have you had any activities in connection with undertaking to arrive at a basis for making reports to the various states and agreeing upon a basis for the making of the reports and computing underwriting figures?

A. Yes, I was chairman of a committee of the National Board which conferred with the commissioners, at their invitation, to arrive at an agreeable answer to certain questions propounded by the commissioner of Arkansas with respect to what constitutes a reasonable underwriting profit, and the method of determining the same.

Q. And you say that you did that as chairman of a committee of the National Board. What is the National Board?

A. That is an association of all of the fire insurance companies doing business in the United States. I should say 95 per cent in number, of the fire insurance companies, and perhaps 98 per cent of the business done, is represented in that organization.

[fol. 1042] Q. Does it bear some kind of a similarity to bar associations among lawyers?

A. I should say there is great similarity.

Q. Views are exchanged between the different companies as to the methods of furthering the general interests of the companies as distinguished from their separate and individual problems?

A. That is it.

The Referee: Do I understand you to say that these 95 per cent control about 98 per cent of the total fire insurance business of the country?

The Witness: No, about 95 per cent of the number of companies transacting business transact about 98 per cent of the total fire insurance business.

Mr. Folonie:

Q. Therefore with the exception of the smaller remainder outside of that organization that is representative of practically all the fire insurance in the country?

A. It is.

Q. And what was the committee of which you were the chairman that you mentioned?

A. It was the committee for conference with the Insurance Commissioners' Convention; to go back, in September, 1919, the commissioner of Arkansas propounded these questions to the national convention of insurance commissioners, the convention referred it to this fire insurance committee, which in turn submitted them to the National Board. The National Board appointed this committee and we prepared answers to the various questions raised by the commissioner. These were submitted to the fire insurance committee of the convention, and for about two years there [fol. 1043] was discussion on that off and on at the various meetings of the convention and of the committee.

Q. Now, these insurance commissioners, they have an organization—a voluntary organization of the insurance commissioners or superintendents of various states, where they meet annually, do they?

A. They meet semi-annually—and occasionally oftener. The committees particularly.

Q. Now, those two years of discussion of the subject matter was had by yourself and committee on the one part and who on the other part?

A. The Fire Insurance Committee of the National Convention of Insurance Companies. The insurance commissioner of Virginia, Commissioner Joseph Button, was chairman of that committee.

Q. And you say these discussions lasted over a period of some years?

A. Two years. Beginning with December, 1919, until they were finally—until an agreement was reached in December, 1921.

Q. What was the nature of these two years' sessions, meaning the problems that were discussed between your committee representing the companies and this committee representing the commisioners?

Mr. Barker: We object to that as entirely hearsay and not in any sense material in this case and not binding at all upon the State of Missouri.

Mr. Jacobs: And add, if you please, the further objection that this was a discussion relating particularly to the needs of the State of Arkansas where the statute is different from

[fol. 1044] the statute of the State of Missouri, in that it limits an inquiry to an underwriting inquiry.

The Referee: Between whom were these discussions held, Mr. Kurth?

The Witness: Between the committee of the National Board and the Fire Insurance Committee of the National Convention of Insurance Commissioners, and eventually the convention itself.

Mr. Barker: And for the further reason that there is no evidence here that the defendant in this case was a party to this proceeding, and any action on the part of the Superintendent of Insurance of the various states would have no binding effect upon the State of Missouri.

Mr. Folonie: The defendant Hyde was not commissioner at the time. Mr. Hardy was then commissioner. He participated in these negotiations when he was commissioner.

Mr. Barker: Our objection is that it is hearsay. That is all we care to say about it.

Mr. Hogsett: But it would be binding against Mr. Jacobs' objection if your predecessor was in office and a party to it.

The Referee: There is nothing in the record to that effect so far.

Mr. Barker: It doesn't make any difference to us who was there; purely hearsay. If a group of men can meet somewhere——

Mr. Folonie (interrupting): We don't contend that it is binding in the sense it estops you, but it is competent to show a concurrence of mind between companies and insur-[fol. 1045] ance commissioners upon a basis for whatever weight the court thinks is proper to be given to such a conclusion by those expert in the business.

By the Referee:

Q. Did the Fire Insurance Commissioner of Missouri participate in these assemblies and discussions?

A. Yes, sir.

Mr. Jacobs: Let me suggest to the court the suggestion that I made a moment ago: That the basis of this inquiry rose from this witness was by Mr. Folonie that these negotiations or discussions were directed against and answering of certain questions propounded by the commissioner in Arkansas. Now, that couldn't have any binding

effect on the State of Missouri even if the statutes were similar—which they are not.

Mr. Cockrill: Many of these questions had no reference whatever to that.

Mr. Jacobs: The basis of the whole inquiry was did these people meet and discuss the way in which the inquiry should be answered for the State of Arkansas. That was the basis for this whole examination a little — ago, and if that question is permissible—not only that it would be binding on the State of Missouri, but that the conditions are similar.

Mr. Hogsett: It was not limited to the narrow extent that Mr. Jacobs states. The controversy in Arkansas simply gave rise to the occasion for the discussion. The discussion covered points that were not involved in Arkansas at all.

[fol. 1046] Mr. Folonie: I am submitting the matter to the court on the question as asked.

The Referee: Read the question.

(Question read by the reporter.)

Mr. Folonie: I am not asking now for what conclusions were reached but what were the questions and problems so discussed.

Mr. Jacobs: Let our objection be noted to the question as repeated.

The Referee: Overruled.

The Witness: The questions were asked—the questions that were asked were what constitutes a reasonable underwriting profit, and the method of determining the same—whether paid by earned premiums or paid and incurred losses and expenses. Whether in such calculations income and excess profit taxes are to be allowed as an expense. Whether any items of profit or loss connected with the so-called banking end of the business should properly be taken into consideration.

Define what is to constitute a conflagration, and determine what part of a conflagration would be properly chargeable to the state in which the fire occurs.

Outline a plan complete as to detail by which the various states can be guided uniformly in making their forms.

Those represent the questions involved and discussed.

By Mr. Folonie:

Q. Were those matters that you have mentioned discussed over this period you have mentioned?

A. Yes, sir.

[fol. 1047] Mr. Jacobs: What was that period?

The Witness: From December, 1921, until the final agreement was reached in December, 1923.

Mr. Leahy: It was 1921 instead of 1923.

The Witness: 1919 to 1921.

Q. Have you the report of the Fire Insurance Committee of the National Convention of Insurance Commissioners before you?

A. I have a copy of it here.

Q. Were you present when the action was taken by the Convention of Insurance Commissioners in December, 1921?

A. Yes.

Q. And is the pamphlet you have there the action so taken by the convention on that occasion?

A. Yes, sir.

Q. Where was that convention held?

A. In New York, at the Hotel Astor.

Q. Is this the report that you mention (indicating document)?

A. Yes, sir.

Mr. Folonie (addressing the reporter): Number it, please.

(Whereupon the document so referred to was by the reporter at the time duly marked plaintiffs' Exhibit No. 798.)

Q. Now, did Mr. Hardy, then Insurance Commissioner of Missouri, participate in that report?

A. In the discussion.

Mr. Barker: We object to that and ask it be stricken out for the reason that any discussion in 1919 to 1921, not cover-[fol.1048] ing the period of time under inquiry in this case, from '17 to '21 inclusive, covering an entirely different period of time than the inquiry provided for by the Missouri statutes, and for the further reason that any agreement or understanding between any set of men at any place

in the United States, as to what would be a reasonable profit or what would not would usurp, or usurp the function of the court; is purely hearsay, and in violation of the Missouri statutes, which provides a method of inquiry which cannot be set aside by a voluntary meeting or association of insurance agents or commissioners of any kind. And we ask that all the testimony of this witness with reference to any hearing or consideration between any set of men be stricken out; for the reason that the same is purely hearsay.

Mr. Jacobs: In addition to that, Your Honor, in the condition of that, that this report appears to have been signed by representatives of several states no one of which is Missouri, and there is no evidence here to disprove the fact that the then commissioner of insurance of the State of Missouri, may have been there protesting against this thing. No evidence he agreed to it or anything of that kind.

Mr. Barker: I don't care whether he agreed to that or not.

The Referee: The referee does not consider that the report of any discussions antecedent to the report would in any sense be binding at all. There is a possibility that [fol. 1049] they may be enlightening and the objection is overruled.

(To which action and ruling of the referee the defendant then and there at the time duly excepted and still excepts.)

Q. The last question was whether Mr. Hardy, the Insurance Commissioner of Missouri, participated in the discussion?

A. He did.

Mr. Jacobs: We object to that, as to whether he did or did not. The whole hearing was ex parte, and was purely hearsay, and if an association of insurance men can get together and determine what rates are reasonable and what are not, then it is in violation of the Missouri statute, which prescribes the method of inquiry; and understandings are pure hearsay.

The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

Q. You may answer.
A. I already answered it.

Mr. Folonie: We offer in evidence the paper so identified by the witness, as plaintiffs' Exhibit No. 798.

(Whereupon the document so referred to being so offered and introduced, was admitted in evidence, and is in words an dfigures as follows, to-wit:)

[fol. 1050] PLAINTIFFS' EXHIBIT No. 798

Report of the Fire Insurance Committee of the National Convention of Insurance Commissioners, Approved and Adopted December 7, 1921

Published by National Board of Fire Underwriters, Actuarial Bureau Committee, New York

(Supplement to "What Constitutes a Reasonable Underwriting Profit and the Method of Determining Same")

At the 1919 annual meeting of the National Convention of Insurance Commissioners, held in Hartford, Conn., certain resolutions were adopted, with the queries embodied [fol. 1051] therein, and the replies thereto were prepared and printed in a pamphlet entitled "What Constitutes a Reasonable Underwriting Profit and the Method of Determining Same," published by the National Board of Fire Underwriters through its Actuarial Committee in 1920.

Following a review of these replies, the Fire Insurance Committee of the National Convention of Insurance Commissioners filed its report with the Commissioners' Meeting of December 7, 1921, which report was, in turn adopted by the Convention, and is presented herewith.

Report of the Fire Insurance Committee to the National Convention of Insurance Commissioners, December 7, 1921

Through legislative enactment varying degrees of control over fire insurance rates within their borders have been assumed by several states. All such laws are based upon the principle that rates between risks of substan-

tially the same hazard must not be discriminatory but some go further and require that they shall be no higher than to provide a "reasonable" underwriting profit. In one [fol. 1052] state the percentage of such "reasonable" profit is named and in another a specific requirement is laid down that the conflagration hazard both within and outside of the state shall be taken into consideration.

Further, as it is probable that in the future other states may enact legislation of similar effect, it is highly important that this body clearly express its convictions as to what constitutes a reasonable underwriting profit and a proper and uniform method of arriving at same.

Two years ago at the Convention Session in Hartford this subject was referred to in a resolution, after which the fire insurance committee of the convention met with a committee appointed by the National Board of Fire Underwriters, both bodies realizing the great importance of having an agreement embodying the factors necessarily involved. While it was recognized that the National Board had no supervision over rates, it was selected as the only national organization of fire insurance companies. Frequent and lengthy conferences of the committees were held at which the various features were exhaustively studied. [fol. 1053] The final joint meeting took place in New York in April last when the following was agreed to:

1. Underwriting profit (or loss) is arrived at by deducting from earned premiums, all incurred losses and incurred expenses.

2. No part of the so-called banking profit (or loss) should be considered in arriving at the underwriting profit (or loss).

3. Five years is the minimum period over which a dependable experience can be established.

4. A conflagration is any loss in excess of a million dollars.

5. The first million dollars of loss is chargeable to the state in which it originates, the balance being prorated to all the states (including the one in which it originates) in proportion to the premium income of each state.

5. A reasonable underwriting profit is five per cent, plus three per cent for conflagrations. The three per cent allowance for conflagrations is subject to revision if and when the records of conflagrations to be collected by the National Board show that such three per cent is excessive or inadequate.

[fol. 1654] The following formula is recommended in arriving at the experience in any given state:

Underwriting Results, State of ——, Year Ending December 31, 192–

Net Premiums Written	$	
(From gross premiums, deduct all return and Reinsurance premiums, paid or effected.)		
Add decrease or Deduct increase in unearned premiums		
Earned Premiums, Net		
Incurred Losses, Net		
Incurred Expenses: ——		
Specific to State		
1. Loss Adjustment (Including Legal Expenses on Losses)	$	$
2. Field Supervisory.		
[fol. 1655] 3. State Taxes, Licenses and Fees		
4. Federal Gross Premiums Tax		
5. Inspection and Rating Bureau		
6. Special Classification demands, if any, directly chargeable to state (Convention resolution of September 30, 1921)		

	Pro Rata to State*	
7. Commissions and Agents' Allowances (including losses on unpaid balances)	$ ..	$
8. Home Office Salaries and Expenses (excluding expenses for classification data entered under item 6) ..		
9. Rents ..		
[fol. 1056] 10. Funiture and Fixtures		
11. Maps, including corrections		
12. Inspections & Surveys including Underwriters' Boards & Assns. (Exclude amount entered under Item 5 above) ..		
13. Postage, Telegraph, Telephone, Exchange and Express		
14. Legal Expenses, excluding legal expenses on losses		
15. Advertising and Printing		
16. Federal Income and Excess Profit Tax ..		
17. Miscellaneous		
18. Allowance for Conflagration Hazard (3%) ..		
[fol. 1057] Underwriting profit or loss		$
Reasonable Underwriting Profit (5% on Net Premiums earned).		
Balance		$

The effect of this agreement is to establish 5 per cent as measure of reasonable profit that should be accorded the companies on their net premiums earned with an additional 3 per cent allowance to cover conflagrations—a conflagration being defined as a loss in excess of $1,000,000 in a single fire. It is agreed that the first million dollars of a conflagration loss shall be charged to the state in which it originated and the balance pro rated among all the states

(*) Calculated on "Net Premiums Written."

(including the one in which it originated) in the proportion that the premium receipts in each state bear to the total in all states. Until such time as accurate statistics of conflagrations are available through the Actuarial Bureau of the National Board they shall be estimated and allowed at 3 per cent of net premiums written.

So as to make for complete understanding and uniformity the technical terms used in the above agreement are defined as follows:

[fol. 1058] Underwriting Income.—Premiums earned on insurance contracts during the year, less losses incurred and expenses incurred.

Investment or Banking Income.—The gross amount of income earned during the year from interest, dividends and rents.

Earned Premiums.—From the amount of gross premiums written on insurance contracts during the year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding year and deduct unearned premiums on outstanding business at the end of the year.

Net Premiums Written.—Gross premiums, less all return or reinsurance premiums paid or effected.

Losses Incurred.—To losses paid during the year, add salvage and reinsurance recoverable outstanding at the end of the preceding year, and deduct salvage and reinsurance recoverable outstanding at the end of the year. To the result so obtained add all unpaid losses outstanding at the end of the year and deduct unpaid losses outstanding at the end of the preceding year.

[fol. 1059] Expenses Incurred.—All expenses shown on the annual statement approved by the National Convention of Insurance Commissioners computed as follows: To all expenses paid during the year add expenses unpaid at the end of the year and deduct expenses unpaid at the end of the preceding year.

This committee should not close its report without a reference to the fine spirit with which the companies have entered into the discussion and settlement of the many perplexing questions involved.

We are of the opinion that the voluntary agreement herein effected is equitable both to the insurance companies

and the buyers of fire insurance. We recognize further the economic service performed by fire insurance companies in addition to the indemnity offered and believe their public service work should receive our endorsement. Coordination in rating to reduce costs and prevent discrimination between insurants coupled with this new voluntary agreement for a limitation of profits on their underwriting operations in our judgment establishes the system on a sound and defensible basis—when considered with the high solvency standard required by the present reserving laws of [fol. 1060] the states—and must in a large measure remove a source of criticism that constantly has been directed at the business under our supervision.

Joseph Button, Chairman, Virginia. T. J. Houston, Illinois. R. S. Burlingame, Rhode Island. James F. Ramey, Kentucky. F. R. Stodddard, Jr., New York. Joseph G. Brown, Vermont. Clarence Hobbs, Massachusetts.

[fol. 1060a] Clerk's certificate omitted in printing.

[fol. 1061] Mr. Jacobs: Our previous objection was to the testimony, and now we are objecting to the offer for all the reasons heretofore assigned to the questions asked preceding the offer of this instrument.

[fol. 1062] The Referee: Overruled.

Mr. Jacobs: And because incompetent, irrelevant and immaterial, and because it is a mere fugitive report of some hearsay testimony.

The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

By Mr. Folonie:

Q. When the vote was taken upon this, Mr. Kurth, do you remember who voted for and who voted against it?

Mr. Jacobs: We object to that as irrelevant, incompetent and immaterial and——

A. In the convention, you mean?

Mr. Jacobs (continuing): For the reason it is incompetent and immaterial, and for the further reason that if there are any reports or records of this convention that then the reports would be the best evidence—if they are competent at all—of what transpired.

The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

A. The vote was, as I recall it, 28 to 2 in favor of the Fire Insurance Committee's report, which is the document just admitted.

Q. Do you recall whether the Insurance Commissioner of Missouri voted for or against it?

Mr. Jacobs: We make the same objection to that question that we did to the last preceding one.

The Referee: Overruled.

[fol. 1002] (To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

A. Frankly I don't recall. When the result was given—all I was watching for was the adoption—was the opposite.

Q. Well, who were the opponents, do you remember?

Mr. Jacobs: The defendant objects to that method of attempting to prove the commissioner of the State of Missouri voted for this as a more negative form of proof, and it couldn't possibly be a proper method of proof. He may have remained outside, or he may have remained silent, or he may and have been in there, and it is not the best evidence anyway, Your Honor.

The Referee: I don't think that is material. Objection sustained.

(To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still excepts.)

Q. Mr. Smith, in the course of your activities in your business, have you formed a judgment as to the proper

reasonable and logical method of computing underwriting profits or losses of a fire insurance company?

A. I have.

Mr. Barker: We object to that because the Missouri statute does not attempt to limit a property loss to underwriting activities and specifically states that the Insurance Commissioner shall consider the earnings of the company—not limited to the underwriting activities.

[fol. 1063] The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

The Referee: What was the answer?

The Reporter: "I have."

Q. And in the ascertainment of underwriting profits or losses of a fire insurance company, what premiums whether earned or the paid premiums or some other basis, is in your judgment the proper basis for the calculation of such underwriting profits or loss?

A. Earned premium basis.

Q. Will you state please why you believe that to be a proper basis rather than the written premium basis?

A. In calculating a profit based upon an earned and incurred basis you arrive at the figure which the company may disburse as dividends. When you get a figure that may be disbursed in dividends I think it clearly shows the actual profit that the company makes.

Q. Now if you undertook to make a calculation of underwriting profit or loss, and you did it on the basis of written premiums and paid losses and expenses and thus arrived at a balance, and if that showed a balance of supposed profit on that method of calculation, would you say that a company making its calculations solely on that basis would be warranted in dividing what remained thereafter among its stockholders in the sense of dividends or otherwise, as a profit?

A. It is quite conceivable that especially with a new company beginning late in the year, figuring their profit on the [fol. 1064] basis you have just mentioned would show a very handsome return, and when it filed its statement with

the department of insurance in January, it would be required either to restore its capital or to cease business.

The Referee: Your answer to the question, then, is no?
The Witness: "No."

Mr. Folonie:

Q. If a company making its calculation on the basis of premiums received and expenses and losses made should make disposition of the balance remaining after such calculation, and then during the succeeding years would have heavy losses upon those policies written during the antecedent period, what would they have to meet those losses and expenses during the succeeding year?

A. Nothing but their capital and paid in surplus—if any.

Q. What is the fact when a new company enters in the field as to whether it is a possibility, from a practical standpoint, for them to conduct a business by the payment in of capital without payment in of surplus?

A. It couldn't go on. In fact while the law does not specifically provide for a paid in surplus in New York State, the department now requires a new company to provide a surplus when beginning business. That is, the minimum capital requirement is $200,000, but the department in addition requires that a surplus be paid in in order to provide funds for development expenses, the premium reserve and so forth, so that it won't—so that the capital won't be impaired the minute it begins operations.

[fol. 1066] Q. What could cause the impairment of capital on a new company which starts with its capital fully paid up and having no fully paid up surplus?

A. The putting up of the unearned premium reserve in addition to the——

Q. Why not put up that unearned premium reserve out of the premiums they received and then they won't need to bother with the surplus at all?

A. They don't come in fast enough. Take a five year policy, assuming the average expense ratio of a company of 40 per cent and a five year premium of one hundred dollars, 40 per cent of that $100 or $40 must immediately be set aside, as a test of solvency, in the unearned premium reserve, whereas the company only receives net $60.

The Referee: The remaining $30 going to the agent?

Mr. Folonie: Remaining $40.

The Witness: $40 for the agent, expenses and taxes and overhead.

Q. Where does it get the other $30 to put up?

A. From its surplus.

Q. What is your observation as to an old established company as to the amount or proportion of the unearned premium reserve contributed by surplus, as distinguished from premiums?

A. Exactly the same ratio for a while, as the business goes on, the five year policy will have expired and that reserve is released into the surplus, yet it is replaced by another five year policy—or that particular policy is renewed. [fol. 1067] Now that operation continues. As the company goes along each year of its business, and the same situation exists with the oldest and strongest companies that does with a new company.

Q. One difference is that the older company is more likely to have a fund to draw on for filling in that gap?

A. It has accumulated surplus either from its earnings or by payment from the stockholders.

Q. And what part of the unearned premium reserve, according to your observation and judgment, assuming the unearned premium reserve to be a certain specified figure at a certain specified date, what part of that has come out of surplus?

A. In our case 40 per cent has been taken from the surplus and set up in the reserve account.

The Referee: Mr. Blume, will you read that last question and answer?

(Question and answer read by the reporter.)

Q. To put it the other way around, then, there [illegible] that means that approximately 60 per cent of the unearned premium reserve as it appears in your books and statements to the state, comes out of premiums and 40 per cent out of surplus?

A. Correct. That is the idea.

Q. You have mentioned the incurred, not only earned premiums, but you have also used the term incurred loss and

incurred expenses. Very briefly, what does the term incurred mean as you use it in that connection?

A. Losses sustained or losses happening. Immediately we are advised of a loss it is entered on our records and until it is paid it remains in the outstanding column. That [fol. 1068] is, we have at the end of the year something like $7,000,000 of outstanding losses that have not been settled or paid.

Q. And that means that fires or other casualties insured against have occurred, you have an estimate of what the loss will be which you will have to pay but you have not in fact paid them or issued your check or draft to meet the loss?

A. That is the situation, yes, sir.

Q. What about expenses? Why take the incurred basis rather than the paid basis of expenses?

A. Well, at the end of the year we have written a considerable volume of business in the different states. The amount of taxes payable on those premiums is not ascertainable nor does it become payable until the early months of the succeeding year. By February 28th we have probably liquidated all of the taxes on the prior year's business.

Q. So that one of the principal items which you set up on your incurred expense figure is the item of taxes?

A. Incurred, but not paid.

Q. Yes. And you know approximately what those taxes will be?

A. We average them. We know the average rate and it is an approximate figure, of course.

Q. As to estimating the amount of your losses for the purpose of this incurred figure, isn't it a fact that the estimates of such losses are as a rule made rather liberally so as to more likely exceed than go below the figure at which it is finally paid or adjusted?

[fol. 1069] A. That used to be true, very much so in years gone by. The agent of property owner would go and estimate the loss and usually gave a liberal figure, but with the violent increase in value of commodities and buildings during the war that margin has been reduced—if it has not entirely disappeared.

Q. Well, suppose it were true that there were an overestimate of losses so that the—so that when you came to make your final adjustment for the final payment that it would be found that the payment when made really ran less than the estimate which you had carried forward from the former year—would that in your judgment cause you to abandon the incurred basis of calculation?

A. Not at all, because any over-estimates or under-estimates in the outstanding losses at the end of the year are taken into consideration in arriving at the incurred losses of the succeeding year. In other words, take for 1922, our incurred losses are arrived at by taking the amount actually paid, deducting those that were outstanding at the beginning of the year and adding those that were outstanding at the end of the year.

Q. Well, it has been suggested that that method of calculation may be subject to criticism because in an ascending scale of business you deduct a larger figure at the end than you are adding in at the beginning, and it is suggested that that may be productive of an unfairness in computation. Now, what have you to say about that?

A. I don't see where the unfairness comes in. If you are doing an ascending scale of business you are bound to [fol. 1070] have increased losses. And by the same token you are bound to have a considerable number of them and an increased number of losses that are not settled by the conclusion of the calendar year or any other stated period.

The Referee:

Q. Mr. Kurth, may you not have an ascending scale of losses with a descending scale of business?

A. It has happened, but as a general rule the losses and premiums go up or down together. The broad line would be parallel.

Mr. Osborne:

Q. Now, what year was it, during the last four or five, when the peak of your business existed—I mean when your premiums were the highest?

A. '21—1921.

Q. And what was the cause—the economic condition which led to the increase of the volume of premiums at that time?

A. Principally the high cost of building materials which naturally entered the—affected the insurable value of all existing buildings; the high price of commodities, of wheat and cotton and so forth.

Q. In other words, a commodity which increased 25 per cent in value would if it were undertaken to fully insure it cause an increase in the amount of insurance on that commodity to the same proportion, or in the same proportion?

A. To exactly the same proportion.

Q. And if you set up in 1921 your earned premiums and carried your unearned portion forward to the following year then what losses would be chargeable against—against [fol. 1071] which figure would the losses in 1922 come, for a policy written in 1921?

A. Against the unearned portion of the 1921 premiums.

Q. And in 1922 did values remain as they were or did they sag off?

A. Sagged off quite violently.

Q. And when that sag came what happened to the volume of premiums?

A. It dropped or they dropped proportionally, except as it was taken up by new building construction.

Q. And when did you get your heaviest losses, '21 or '22?

A. Decidedly 1922.

Q. And if you had carried all of your premiums that you wrote in 1921 against that year, taking the regular premium basis, what would have happened to you in 1922?

A. The surplus, instead of being some fifteen million, would have been down to about six million dollars.

Q. What do you say, Mr. Kurth, as to the propriety or impropriety of calculating profit, earnings or interest derived from invested assets of the company in undertaking to make a calculation of profit or loss within the State of Missouri for the purpose of arriving at an equitable rate of insurance upon property within that state?

A. They are entirely separate transactions; have no relation to each other and not affected by the same factors.

The Referee: Read that answer.

(Question and answer read by the reporter.)

Q. Will you give a little further explanation of your answer for the information of the court on the—you may assume for the purpose of this answer that the court is not [fol. 1072] informed as to the method of conducting your business, and so please explain it so as to illuminate the subject to one not conversant with the intimate details of the conduct of your business.

A. Going back to the illustration of the five year policy with the $100 premium:

The various laws of the various states insist that in order that the company may be in a position to carry out its obligations—that the companies set aside as a liability the unearned portion of that premium which includes on the five year policy—or put it this way, which in the case of the five year policy is $80, the point being that should the assured desire to cancel his policy the company would be in such a solvent condition that it could return the unearned portion, or $80, to the assured; secondly, that it be in a position to pay losses which might occur under that particular policy and others, of course.

Mr. Leahy: And returned to the assured in the event of cancellation.

The Witness: Yes. In other words, if our company decided to cease business today, as a going concern, and wanted to rid itself of all liability in the insurance business, this unearned premium reserve in our liabilities represents the amount of money we would be obliged to return to every policyholder in the country in order to secure a cancellation of his policy.

The Referee: Is that reserve actually set aside and kept in a separate fund?

[fol. 1073] The Witness: No, it is not earmarked. It is simply included in the liabilities as a test of solvency.

By Mr. Folonie:

Q. That is, it is a book figure out of your assets which is segregated on the books but not physically segregated in your bank accounts or securities?

A. That is correct.

Q. Now, with respect to your capital and your surplus, do you think that the earnings or profit or interest derived from those has any proper place in the calculation of a proper rate of charge for premiums in a particular state upon policies issued in that state?

A. I do not.

Q. Why?

A. The stockholders could put up the capital and the surplus and invest it without subjecting it to the risks of the insurance business and without paying taxes thereon to a given state.

The Referee: That is, they could invest their funds in some other line of business?

The Witness: Or invest it solely in securities and secure the return thereon.

Q. You could leave them in the same securities in which, for instance, you have them now, simply putting the funds into the securities business—keep them out of the insurance business, and you would not subject that money to any risk of fire losses?

A. That is right.

Q. Now, in the event of fire loss in the State of Missouri, what part of your capital and surplus, assuming you do one one-hundredth of all the business of your company in the [fol. 1074] State of Missouri, what part of that capital and surplus are responsible to Missouri policyholders for the—or in the event of fire losses under your policies?

A. The whole of the capital and surplus are pledged to the carrying out of the contracts we have with Missouri policyholders.

Q. It has been suggested that it might be a proper or equitable course to take that part of your capital or capital and surplus which is represented by a fraction, the enumerator of which would be the business or the premiums derived from the State of Missouri and the denominator of which would be the premiums derived from the business of the company for the United States; apply that fraction to the capital or the capital and surplus and treat that part of the capital or the capital and surplus as being the capital and surplus in the State of Missouri—then calculating what

would be a reasonable profit or return on that part of your capital, or capital and surplus, and regulate your rates so as to be productive of such an amount. In your judgment is that a proper and reasonable course or the contrary, and why?

A. Why, it is utterly fallacious in my opinion. In the first place, in the event of the destruction of St. Louis or Kansas City it would probably be necessary to take a considerable portion of the combined capital or at least of the surplus of the companies. If we undertook to segregate our capital and surplus in that method there would be a very small percentage of our security behind our policies in any given state. Whereas the capital and surplus must be kept liquid to meet excessive liabilities wherever they may arise, [fol. 1075] if they do arise; like at San Francisco, or the Baltimore conflagration. On the other hand, if the company did a railroad or a telegraph business in the state and had certain fixed assets within the state, it would be reasonable to appraise such assets and consider that the capital within the state. No such thing exists with an insurance company.

Q. Well, does the fact that a utility has tangible assets in two different jurisdictions, for example, a street car line running partly in Illinois and partly in Missouri, and having tangible assets by way of rails, ties and things of that kind in each state, investing its capital in such tangibles, whereas the capital of an insurance company is not invested in such tangibles, does that make a point of distinction to your mind?

A. Quite a point of distinction. Then there is this further point—take Missouri, for instance, with its two large cities and the consequent question of conflagration and liability as compared with a state like South Dakota with no comparatively large cities and therefore no great conflagration liabilities, it would be unfair to the citizens of both states to pro rate that capital and that surplus on that basis.

Q. If you were going to pro rate your capital on such a basis and you were going to take some state like say, South Dakota, where your premiums were comparatively small, what part of your capital would you have in South Dakota on such a theory as that?

A. We would have a much large proportion than the actual liabilities in that state, compared with Missouri.

Q. What is a conflagration as that term is known and used in the insurance world?

[fol. 1076] A. We agreed with the commissioners—of course, there is a good many varying ideas of a conflagration, but we centered on this idea: A loss of a million dollars or more represented a conflagration. Some thought a conflagration ought to be based upon the size or the premium producing qualities of a state, but the inequity of that was shown that whereas a million dollar fire would be a conflagration in Pennsylvania, while across the river in Delaware a fifty thousand dollar fire would have to be classed as a conflagration.

Q. Why not, for instance, in the case of the San Francisco fire—why instead of bothering with conflagration figures and undertaking to distribute it throughout the United States, why not just leave the burden of that right on California and let it stand its own fires?

A. It would make the insurance cost prohibitive in California.

Q. Would it be possible in any reasonable period or possible calculation to ever derive enough premiums from the State of California alone to meet that conflagration loss?

A. Not in the aggregate. Not within this generation.

Q. And it is to avoid the placing of an undue burden upon the unfortunate citizens of one state which has had a conflagration loss that it is undertaken to distribute that burden over widely or say more widely, by putting at least a part of it upon the citizens of other states where they are more fortunate?

A. That is the idea. It is getting it down to state lines in the case of conflagration. At least following it to [fol. 1077] its logical conclusion you would penalize the man who owned a home and had a fire and expect to collect from him the entire amount of loss that was paid in his particular case. In other words, it has to be averaged and spread out.

Q. Well, does it make your point any clearer to change the lines, and instead of assuming that you were going to place the entire burden on the State of California, place the entire burden on the City of San Francisco where the fire occurred?

A. That is the same theory.

Q. Then you would carry it one step further and you would penalize those who did not have any fire, but place it only on those who had the fire—is that where the logic of it leads?

A. That is the theory.

Q. The theory of fire insurance is just the contrary of that—to distribute the losses of those who are unfortunate and have a portion of those borne by those who are fortunate and have no fire at all?

A. That is the whole theory.

The Referee: Your theory then leads to the widest possible diffusion of losses.

The Witness: Correct; yes, sir.

The Referee: One other question right at this point, Mr. Kurth: Do you consider your unearned premium reserve fund as a part of your capital and surplus with respect to fire losses?

The Witness: No, sir.

Q. Is it treated by you as an asset or liability?

A. It is a liability.

Q. Now, in the event that you had a theoretical sum set aside for unearned premiums, we will say you had se- [fol. 1078] curities in your box or your safe where you keep them, and you had a surplus and unearned premium reserve set up as two different figures, and then you had a conflagration which was so great that it would entirely use up your surplus and you still have a large volume of fire losses still unpaid after you have used up your entire surplus, would you then stop paying the fire losses because you had this unearned premium reserve set up on your books, or would you keep on taking your funds to pay fire losses?

A. Keep on paying until the capital and surplus are wiped out and then call on the stockholders for more.

Q. In other words, even though this unearned premium reserve might be impaired or entirely used up, you would keep paying out until you had paid all your fire losses out of a given conflagration?

A. Yes, sir.

Q. In the case of the San Francisco fire, did it have the consequence of using up the entire unearned premium and

earned premiums as well that some companies had, and their surplus as well?

Mr. Jacobs: One minute. If this witness knows. You are not limiting that to the company with which he is connected.

The Witness: It is a matter of general knowledge.

Mr. Jacobs: Object to that because it is not a matter—it is not the best evidence, and this witness has not assumed to testify to a familiar knowledge of any companies except his own—book knowledge.

The Referee: If he knows he may answer.

[fol. 1079] (To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: it is a matter of general knowledge that that happened.

Mr. Jacobs: I object to testimony concerning a matter of general knowledge about books of other companies with which this company is not connected.

The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

Q. Did it go further and take the capital of some companies as well?

A. It did.

Mr. Jacobs: Same objection to that one as the preceding one.

The Referee: Overruled.

(To which action and ruling of the referee the defendant by counsel then and there at the time duly excepted and still excepts.)

Q. Now, in the case of conflagration of great magnitude under this method that we have mentioned, as I understand it, the first million dollars of the insurance loss of the conflagration is chargeable to the state in which that fire happens or occurs?

A. That is correct.

Q. Then the remainder above a million dollars is distributed through all the other states including that one, so that it pays a pro rate also of the balance?

A. Of the excess above a million.

[fol. 1080] Q. And so in other words the first million is chargeable directly to the state where the conflagration occurs, and the balance pro rated over all states, including the particular one?

A. Yes.

The Referee: Why?

The Witness: Conflagration losses beyond the first million must be pro rated. You cannot exclude the state in which it originated. The state is penalized—the state in which the conflagration occurs is first penalized up to a million dollars. The balance distributed among all the other states in order to get the widest distribution.

The Referee: Isn't the penalization of the state in which the conflagration occurs to the extent of one million dollars logically in conflict with your widest possible diffusion theory to that extent?

The Witness: How else—it seemed to be the only logical way unless you wanted to ignore conflagrations entirely.

The Referee: Well, why not ignore them entirely?

The Witness: Except they have to be paid.

The Referee: So do all insurance losses—aren't they?

The Witness: And we take cognizance of all the losses we pay in making our rates.

The Referee: I don't see exactly, Mr. Kurth, why the theory or the practice of penalizing, to use your language, as I recall it, the state in which the conflagration occurs by charging up against that state the first million dollars of [fol. 1081] the losses is not in conflict, logically so, with the theory of the widest possible diffusion of losses?

The Witness: Except that it limits the field over which it is spread.

The Referee: In other words, it is a limitation to that extent on the diffusion theory.

The Witness: Well, I just beg to differ. Or if you are diffusing it amongst 48 states it is at least one state wider than diffusing it amongst the other 47 only.

The Referee: Why not diffuse it among the entire 48?

The Witness: That is the plan—above the first million.

The Referee: Well, why except the first million? That is what I am getting at.

By Mr. Folonie:

Q. Put it another way—why not have your rate computed for the whole country instead of computing it state by state? Isn't that substantially what you are asking?

The Referee: Not exactly. This is what I have in mind: I understand the practice to be, Mr. Kurth, that in the event of what is technically known in your business as a conflagration, if the loss exceeds one million dollars you charge the first million dollars up to the state in which the conflagration occurs?

The Witness: That is correct.

The Referee: The remainder of the loss, assuming that there is a remainder of two millions, for illustration, is assessed against all of the states, including the state in [fol. 1082] which the conflagration occurred. Now, why do you make an exception as to the first million by assessing it against the one state, whereas the remaining two millions are assessed against the 48 states?

The Witness: In order that the record of the particular state will bear a proportion of such a conflagration loss. Otherwise it would escape. I might say this: Otherwise the particular state in which the conflagration occurs would suffer no more by reason of having a conflagration, or paying no more towards reimbursing the companies for such loss than a state which never had a conflagration.

The Referee: Yes.

Q. In other words, the incentive to correct bad conditions in a particular jurisdiction would not exist if it was diffused entirely so they had no burden?

A. That is correct.

Mr. Leahy: Putting a premium on carelessness.

Q. If you were going to carry the suggestion of the court a bit further and you were going to say you would take the first million and spread it all over the United States as well as the particular state, then, to carry that logic still further, if a man had a dwelling loss of $1,000, why that on

the same logic would be then spread all over the United States and not chargeable to a particular state?

A. Then we surely would have national rating organizations.

Q. Then if I understand you, this practice of charging the first million dollars to the state, in the case of a con-[fol. 1083] flagration, is a recognized exception to the theory of—that is treated as an extraordinary loss as distinguished from an ordinary loss?

A. Yes.

Q. In other words, the ordinary loss is charged to the state, and the extraordinary losses are spread along?

A. Yes.

Q. And up to a million you treat it as an ordinary loss?

A. We had to have a dividing line somewhere.

Q. Now, if you were going to diffuse entirely—you mentioned your company doing a foreign business—you do business in South America?

A. South America, Europe, Asia, Canada, Australia.

Q. Do you in spreading your conflagration out, do you take into account conflagrations in Japan and England and South America, in your computation of conflagrations in this country?

A. When this is in force in all the cities and all the countries that computation will take place.

Q. In other words, when insurers if they ever do become like your company, international writers, then the distribution of conflagration losses will likewise become international?

A. Yes, worldwide.

Q. But at the present time I suppose the companies doing business in the United States, the majority of them do not write worldwide, like your company?

A. 90 per cent of them confine their business—of the American companies, confine their business here.

Q. What in your judgment is a reasonable underwriting profit?

A. Ten per cent.

[fol. 1084] Q. And that ten per cent computed upon what?

A. Earned premiums, incurred losses and incurred expenses.

Q. Now, I note on this exhibit which has been introduced, the report of the Fire Insurance committee, a reasonable underwriting profit is five per cent plus three per cent for conflagration as they are defined—and you have mentioned ten per cent. Will you state to the court your own views as compared with those figures?

A. This agreement was reached after, as I stated before, a good many conferences, as a result of a compromise. There was a difference of opinion as to the percentage of profits and there was differences of opinion as to the method of figuring it, and there were differences of opinion as to the length of term over which it should apply; also a difference of opinion as to what is a conflagration. Personally I thought that ten per cent profit and a ten-year period should be the basis upon which agreed—we could agree. Some of the members of the committee also agreed that a ten year period should be the minimum, but in view of the fact that one or two of the states had already enacted legislation limiting the period to five years that was finally agreed upon with the commissioners as to the basis of the term.

Some of the commissioners felt that the banking profit, so-called, that is the interest on the invested reserve, should be included. Others thought that the conflagration profit of—that is, the ten per cent profit should be divided into two fives; that is, five for straight profit and five to cover [fol. 1085] conflagrations; and as I repeatedly stated, that after two years of negotiations we reached what we might call a compromise agreement. Certain of the commissioners, including Arkansas and North Carolina, thought that the interest earnings on the reserve should be included, but when it was realized the difficulties of determining how much of the reserve was actually invested and what the actual return thereon was, due to the fact that the securities in the reserve are not earmarked, it was finally agreed to cut down the ratio of profit from ten to eight, of which three was to represent conflagration loss; and it was to be made a variable figure. That is, if the conflagration loss over a period of years consumed more than three per cent, the percentage was to be raised, whereas if it was found to be too high, that was to be reduced. In consideration of that reduction the question of banking profit was eliminated by unanimous agreement.

Q. In other words, the agreement finally was five per cent underwriting profit plus three per cent for conflagration, and the companies to retain the earnings on unearned premiums without any accounting for it at all in the underwriting calculations?

A. It would be ignored entirely in calculating the underwriting profits.

Q. But your own personal view, I take it then, is that these figures are lower than your judgment indicates they should be, and you think ten per cent underwriting profit is reasonable?

A. Yes, sir, considering the hazard the business subjects the companies to.

Q. And that ten per cent figure as you mention it is then inclusive of the care of conflagrations?

A. Absolutely.

[fol. 1086] Q. In other words, that is included in your ten per cent figure then as an indivisible part of it?

A. Yes.

Q. When you say ten per cent underwriting profit is that upon the assumption that the earnings on the invested assets of the company remain with you, or that you account for them or some part of them?

A. Remain with the companies to do with as they please.

Q. Now, if in the calculation of underwriting profits your formula were to be corrected or changed to the extent that there was to be an accounting or credit to the policyholders in figuring the rate to the extent of taking into account the earnings on the unearned premiums—in the event of such a method of calculation would the ten per cent underwriting profit you mention be adequate in judgment or would you in that event alter your proportion or figure?

A. I didn't quite grasp that. Is it your idea that this ten per cent should include the earnings on the——

Q. No, my question is, if your formula for calculating the underwriting profit were to be altered to the extent that the earnings on unearned premiums were to be thrown into your underwriting calculations and the company not retain them, but if credit be given the policyholders in the making of the rates, would you then still adhere to your ten per cent figure as underwriting profit, or would you change it?

A. I would increase it.

Q. By how much?

A. By whatever sum could be determined as being or as representing the so-called banking profits.

Q. Now, would you have——

[fol. 1087] The Referee (interrupting): Pardon me, Mr. Folonie. Have you any sum in mind that would compensate for that change?

The Witness: It is pretty difficult to determine. As a guess I should say between two and three per cent.

Q. Upon the earned premium figure?

A. Upon the earned premium figure.

Q. Now, in making that deduction as to that being the ratio you have in mind that a portion of that unearned premium reserve, so-called, is contributed by surplus and is therefore not derived from premiums?

A. Correct.

Q. I don't know whether you mentioned what proportion of that reserve—yes, you mentioned 40 per cent?

A. Yes.

Q. No, in addition to that do you have outstanding agency balances in your business?

A. We do.

Q. About what is the average amount or proportion of the year's business which is outstanding in the hands of agents?

A. Not less than 20 per cent of the written premiums during any current year.

Q. And have you the figures as of any date with you to show what they were as of a particular date?

A. Yes, sir.

Q. I mean to point your—to illustrate your statement as to percentage by figures if you have them?

A. In January last the outstanding uncollected premiums were $6,859,163.85.

Q. And what were the written premiums during that year?

A. $41,000,000. It is well to bear in mind, however, that [fol. 1088] this figure of six million odd which I have just quoted is the net amount due from the agent after he has deducted his commissions and other charges which are properly chargeable against the company. In other words, when these agents remit they will remit for certain pre-

miums from which their compensation has been deducted, and the balance is represented by this $6,200,000.

The Referee: The $6,000,000 then represents the net amount due the companies as between the agents and the company?

The Witness: That is correct.

Q. In other words, if you wanted to find the proportion that the uncollected part bore to the premiums, and you wanted to put it on the same basis as the premiums are, so as to make a comparison, you would have to increase this amount by that proportion which had not been deducted?

A. Yes.

Q. In other words, if the agent's commission, for example, was—and expenses—were 25 per cent, you would have to increase this balance 33 1/3 per cent to bring it back to the premium basis?

A. That is correct.

The Referee: During what period of time had that $6,000,000 accumulated?

The Witness: That represents business written between October 1st, 1922 and December 31st, 1922.

Q. In other words, they were not, as you do your business, past due?

A. They were not past due. They were within ninety days, as we call it.

[fol. 1089] Q. After ninety days they are known as a non-admitted asset and you cannot take credit for them in your statements to the states?

A. That is correct; and in our case there is an additional sum of close to a million dollars representing agents' balances on policies dated prior to October 1st, 1922.

Q. In other words, in making your statements to the state that you have outstanding premium balances more than ninety days past—put it this way: If you have premium balances more than ninety days past due you don't show them in your statement at all?

A. No—well, yes, they show, but they are deducted again as an unadmitted asset.

Q. They are not in the figure of your admitted assets where that part of it appears?

A. Not at all.

The Referee: What per cent, if any, of losses occurs in the collection of this sum of $6,000,000?

The Witness: Very, very small fraction. I should say considerably—on an average our bad debts between a tenth and a hundredth of one per cent.

Mr. Jacobs: Is that on the million—say using the million as a basis of past due accounts? Does that mean that per cent of that million?

The Witness: Of the written premiums. And includes losses on any past due—so called past due balances.

The Referee: My question referred to the $6,000,000 which had accrued between October 1st and December 31st of the year in question. What per cent, if any, of loss occurs in the collection of that amount?

[fol. 1680] The Witness: Well, I should say the same percentage. It is a very negligible item, and I can't just recall, for instance, what we were obliged to charge off last year, but it was hardly worth considering, in a business of the magnitude of ours.

Q. Now, in setting up the reserve for your unearned premiums, to get at the amount of such unearned premium reserve which would be invested and uninvested necessarily the amount which you would not reduce to possession would be uninvested?

A. Naturally.

Q. And do you in addition to the outstanding balances which are uninvested also keep on hand in cash any sums of money to meet losses and expenses and other immediate demands?

A. We carry a considerable sum. It runs from two to five million dollars cash in the bank to meet losses, return premiums and current expenses.

Q. Now, is there any way that you know whereby with certainty it can be calculated as to what part of the unearned premiums of your company are in invested form and what part is uninvested form?

A. A very difficult problem, and you could only approximate it.

Q. And is the approximation you have given as two per cent on the earned premium figure as the earnings of the unearned premium the nearest approximation you are able to give?

A. I should say that it would be a fair approximation.

Q. And you mean by your answer—so there will be no misunderstanding of it—you mean by your answer that it is not capable of any exact calculation, but that from your knowledge and experience you have approximated it [fol. 1091] with such certainty as it is capable of determination?

A. That would be my best judgment.

Q. Now, is this two per cent you have mentioned—my associate and I are not exactly in accord as to what you said—is the two per cent that you have mentioned as the earnings on unearned premium, is that the percentage which the earnings on unearned premium bear to the earned premium figure?

A. Yes. I said, if you will pardon the correction, "between two and three." I would not want to limit it exactly to two per cent.

Q. You may consider my question amended to that extent. I did not mean to misstate that.

A. That would be two per cent of the earned premiums; not two per cent of the reserve.

Q. Do you think that is a fair estimate of the earnings, of unearned premium reserve of companies in general—as an approximation?

A. I would think so, yes. Some, of course, have higher interest returns on their investment and others have more than ours, for instance. I would think that ours would be representative of them all.

The Referee: Do I correctly understand you to say that that percentage is about between two and three per cent?

The Witness: Between two and three.

Q. Is there any requirement of the law any place which requires you to invest your unearned premium reserve in interest bearing securities as distinguished from keeping it in cash?

A. I don't know of any.

[fol. 1092] Q. If any—you do undertake to keep it in invested form, as far as possible, do you?

A. As far as possible. That is the natural thing. We naturally desire to get as much return on our money—on the assets as we can.

Q. Now, if any of these securities in which you have invested such moneys go over a period of time without producing any returns, the securities prove unfortunate and there are no dividends, or the dividends are passed time after time, or the security—we will even go further and assume the security becomes entirely worthless and the company goes into receivership, whose securities you hold, do you still keep that security as one of the unearned premiums—as part of the unearned premium reserve?

A. We do not earmark them but we certainly have to make good any losses that would result from unfortunate investment.

Q. Would it be an admitted asset if it got into that state?

A. No.

Q. If you did not have enough so-called admitted assets to care for your unearned premium reserve, what would be the consequence as to your being permitted to continue in business?

A. We would be ordered to discontinue—ordered to make good that impairment or discontinue business.

Q. Now, if the incentive by way of securing the profits by way of interest earnings on these securities were removed from the stockholders, they were put in the position of having to make good securities that went bad and all of the earnings on the securities went to the policy holders [fol. 1093] by way of a credit on premium rates, would you think in the exercise of judgment that you as an officer of your company would invest those assets at all, or would you keep them in cash?

A. I would certainly keep them in cash—for even liberty bonds showed us a tremendous loss during some periods of the last five years.

Q. The consequence then of undertaking to divert this earning to policyholders would be that instead of investing the money you would keep it in uninvested form and neither you or the policyholder would get any benefit out of it?

A. Except perhaps the current rate of bank interest.

Q. Yes, they do pay a small amount on your daily balances, I suppose?

A. Yes.

The Referee: That leads to the conclusion, then Mr. Kurth, that this two or three per cent must go to the stockholders or cease to be?

The Witness: That is the point.

There is one consideration in connection with that that a good many people seem to overlook, and that is we already give consideration to the possible earnings of invested reserve in the rate of premium quoted. We give a lower rate per year if a man takes out a five year policy than we do if he takes it for one year—and comparing a one year rate with a one month's rate there is a very considerable saving in the rate we quote him.

Q. Will you illustrate it by taking a hundred dollar premium basis, we will say for one year and then show where you get on a one month and a three year and a five year [fol. 1094] policy?

A. Take a one hundred dollar annual premium, as we would call it, the rate for one month instead of being one-twelfth of a hundred dollars would be twenty per cent, or twenty dollars. On that you can see the saving in taking a yearly policy. When you get to a term beyond a year, if he takes it for three years we charge him two and a half times the annual rate, or $250 as against $300 he would pay in annual premiums; and $400 for a five year insurance policy as against $500 for five annual premiums.

Q. Then, in other words, while you take the position that the legal title to the earnings on the unearned premiums clearly belong to the company, yet the equity of the assured who prepays his premiums for a long time has been recognized by the company in the allowance made to enforce such prepayment?

A. That is the point.

Q. And do you think that a reasonable amount for the prepayment of premium for, say, five years' premium, by securing a five year policy for the payment of four—four times the annual premium rate, does reasonably give to the person insured a just consideration for the prepayment of the premium?

A. It is a reasonable consideration. Bearing in mind the fact that if the company desired to terminate the liability it must pay him back the full amount, irrespective of any allowance which it gave to agents or brokers.

Q. What is the essential distinction between a stock company and a mutual company with respect to participation in earnings? Will you give us just a brief view of [fol. 1095] that?

A. The stock company is owned by stockholders who supply the money to begin operations in the shape of capital and surplus paid in, and who must before they are permitted to receive dividends maintain both their capital, their surplus and their unearned premium reserve and all other liabilities. The policyholder as such has no interest in or liability for the experience of the company.

The contrary is true with the mutual company. He pays his money into a pot, and if there is anything left over after the policy has expired, or the series of policies, he shares in it. If there is not enough there he must make good. It is like—a good deal like we had in the office there—we used to chip in to buy butter in the fall, getting it cheap, get a carload from the west, and distribute it amongst those who contributed. If butter didn't go up we were out, but if it happened to go up we thought we had saved some money. If it went bad on us, why we were out again.

Q. You mean, if the price went bad, and not the butter?

A. Well, both. If the price went up or the butter went bad. We had two chances to lose and one to win. That is the fundamental principal of mutual insurance.

Q. And you don't claim to have mutual features in your company at all?

A. None whatever.

The Referee: In other words, Mr. Kurth, the insured in a mutual company has more of the characteristics of a stockholder?

[fol. 1096] The Witness: Yes; exactly so. And the difference in the relation between the two is that in dealing with the stock company he knows in advance what his insurance will cost him, whereas he would not know until his policy expires what his mutual insurance will cost him.

Q. Well, the two series of insurance are quite different and antagonistic in their way?

A. Fundamentally different.

Q. (Continuing:) One to the other.

A. Yes.

Q. What do you say, Mr. Kurth, as to an expense ratio of 42 or 43 per cent, say from between 40 and 45 per cent for—of earned premiums—as a reasonable expense of fire insurance, from your knowledge and acquaintance with the business and business in general?

A. There seems to be a lot of criticism in that it is too high, but it should be recalled that insurance represents, as compared with the manufacturing, industrial or retail trade, the manufacturing, distributing and wholesaling and the retailing, a difference. It combines the three features of other mercantile lines. Compared with them I think the cost is not unreasonably high. In fact, probably a good many of you have hazard of the graduate school of business administration of Hartford University. They send out bulletins on business research, and they have sent out a recent bulletin, No. 32, on the operating expenses of retail jewelry stores in 1921. They have allocated the expenses through the various items and the total expenses——

[fol. 1697] Mr. Jacobs (interrupting): One minute. The defendant objects to the testimony of comparative character because it covers an entirely different situation, and the witness is now testifying purely to hearsay testimony for one thing, and another objection, relating to a company with a tremendous invested capital, presenting an entirely different situation.

Mr. Hogsett: You have already developed this analogy by attempting to put——

Mr. Jacobs (interrupting): We haven't put a witness on the stand to date.

Mr. Folonie: We don't say there is a similarity with any other business. We concede that it is essentially different from any other business, and any evidence we may produce along this line is merely advisory to the court; and we trust to the court to differentiate, and make comparisons simply for the court. We don't insist, for example, that the jewelry business is comparable to the insurance business at all. It has some bearing as showing the general cost of doing business in general and that is the purpose of mentioning it at all. There may be other lines of industry with an entirely different experience.

Mr. Barker: The only objection we would have to it would be that I have attempted in this hearing to interrogate witnesses offered by the insurance companies as to their knowledge of the protection afforded insurance companies by laws governing incorporation, by laws allowing the monopoly on business impressed with a public trust, and I have been met with repeated and constant objection [fol. 1098] to that line of testimony, and if I will be allowed to develop the difference between the retail jewelry business and the business protected by law, guaranteed a monopoly, impressed with a public trust, then of course we have no objection to their testimony.

Mr. Folonie: I assume the court will permit you a wide latitude in bringing out the difference between these lines, and I am frank to admit in the beginning that there is a wide difference between this and any other line of business.

Mr. Barker: Very well. I was met with very strenuous objections when I tried to show that the other day, and the court ruled against me on that; and I withdraw my objection.

Mr. Jacobs: The court has not expressed himself on that yet.

The Referee: The court as at present constituted thinks it has been extremely liberal in the matter of the admission of evidence, and intends to continue so to do, but the court has not entirely abdicated its function in that regard. Agreements between counsel with respect to these matters may or may not be recognized by the court. In this instance it seems to me we are going rather far afield and I see no reason for not sustaining the objection.

Mr. Folonie: Except that it is withdrawn.

The Referee: Well, the court sustains the objection even though withdrawn. We will take a recess now until 2:00 o'clock.

[fol. 1099] (Whereupon an adjournment was taken until 2:00 o'clock in the afternoon of the same day, at which time parties reconvened at the same place and the following proceedings were had:)

WILFRED KUEHN, recalled for further direct examination, having been previously sworn, was examined and testified as follows:

Direct examination (continued) by Mr. Folonie:

Q. Is the basis of computation of underwriting profit or loss by setting up the earned premium figure on the one side, and the incurred losses and the incurred expenses on the other side of the account, as you have testified to it, does that appear in what is known as the convention form of annual statement blank to the various states?

A. It does.

Q. And that convention form, so-called, receives its name from that fact?

A. It is the uniform blank adopted by the National Convention of Insurance Commissioners, and is the form supplied to the companies to report on for each date.

Q. And is that the basis contained in the Missouri blank during the period from 1917 to the present time?

A. It is.

Q. Is that method of calculation and computation universal throughout the various states of the union?

A. It is.

Q. Is the same basis of computation, namely, earned premiums, compared on one side, compared with incurred losses and incurred expenses on the other, and striking a balance to ascertain profit and loss, the method used [fol. 1100] generally in the insurance company's business for their own purposes?

A. So far as I have knowledge, every company calculates its underwriting profits under that method.

Q. Is that the method that has been employed in your company in the regular course of its business?

A. It is.

Q. And in ascertaining what amount you have available for purposes of paying dividends and for other corporate purposes of that type, and ascertaining what amount of as-

sets you have for such purposes, do you use this same basis of ascertaining what profit or losses you have to put into the general surplus from the premiums?

A. Entirely that basis.

Q. Does your company pay taxes to the Federal Government upon any of the activities of your business?

A. It does.

Q. And in paying taxes to the government upon your underwriting activities, what basis is used in accounting and paying taxes to the government?

A. Substantially the same basis, incurred—earned premiums and incurred losses and expenses.

Q. Now, if a method were used of taking received premiums or written premiums and offsetting against them the paid losses and expenses, would a statement so prepared show you—show the true state of a company in your judgment so as to demonstrate that it was solvent or insolvent?

A. I didn't quite get that.

[fol. 1101] Q. If the basis of written premiums and paid losses and expenses were used, would it properly reflect the solvency or insolvency of the company?

A. Oh, not at all.

Q. Suppose you would illustrate that on the assumption of a great conflagration coming in the month of December, none of which had yet been paid, and contrast the two methods of calculation on that hypothesis.

A. If the San Francisco conflagration had happened in December instead of May, before there was an opportunity to actually adjust and pay losses we would have shown for that year, under the written and paid for basis, an underwriting profit of two and a half millions more than we did.

Q. In other words, it would have carried all of the San Francisco losses into a following period or year?

A. It would.

Q. If a company were on the verge of insolvency and found that by paying all its outstanding losses it would result in a creation of an insolvency on their statement, by adopting the written and paid basis and deferring payment of their losses until after the first of the year, what could they do as to manipulating their apparent solvency?

A. It would—take our own case—it would—our unpaid losses are now something like—well, I will get the exact

figures here—(referring to document)—$7,100,000. If we did not promptly pay losses upon adjustment—if we took the sixty days provided in the policy—if we did not hurry the adjustment as much as we reasonably could, and disre-[fol. 1102] garded the liability for unpaid losses we could increase our surplus $15,000,000, on that system.

Q. You mentioned the fact that if you took the sixty days provided in the policy which is allowed for the payment of losses, after expenses—is it not the policy of your company to take all the time you can to pay your losses and take the full—take the full sixty days each time?

A. Not at all. We attempt to pay every honest loss immediately on adjustment. In fact all of our field men and adjusters, some nearly three hundred in number, are equipped. That is, when a proof of loss is signed, in an ordinary loss, when there is no question of origin or ownership or anything else, upon the signing of the proof of loss they issue the draft to the policy holder.

The Referee: A moment ago in referring to a possible change of $15,000,000, I believe—would that be merely an apparent increase?

The Witness: Absolutely apparent. It would not be a real increase.

Q. In other words, it would be a fictitious figure instead of an actual conservative figure?

A. Yes.

Mr. Jacobs: That is, if they deferred all their loses over the year——

Mr. Folonie (interrupting): Just took their written basis—I am assuming their large losses in December of a particular year and you left them unpaid and then did not take them into account because they were not paid——

[fol. 1103] Mr. Jacobs (interrupting): For the one month of December?

The Witness: No, for all outstanding losses; ignored all losses that were not actually paid.

Q. I have some random notes here, I will perhaps jump from one subject to the other for awhile, but if you will bear with me for so doing, Mr. Kurth——

If earnings on investments were to be taken into account in the underwritting item in any way, what would be the effect of so doing if in a period, say like that, I think it was 1921, when investments went off very badly—was that 1921?

A. 1921.

Q. 1921, when the prices of investment securities in general went off very badly—if the investment losses or expenses were to enter into the underwriting calculation in any way, what would be the effect of it upon premiums on that kind of a situation?

A. I would like to interpose here that you are getting down to the financial end of our business, and I wish you would bring in here our financial officer, who could answer that; but as a general supposition my recollection is that in that year 1921, our securities depreciated nearly $5,000,000. Over 25 per cent of that was depreciation of Liberty bonds alone. Now, that more than offset the underwriting profit we made that year. So if it was all to be marked underwriting profit it would be a red ink figure for that year.

The Referee: Whether that was an actual loss or a mere bookkeeping loss would depend to some extent, or would it or would it not, upon whether or not during that period [fol. 1104] you cashed the securities which declined in value?

The Witness: I would, decidedly so—but here is the situation we are confronted with: We must carry every large proportion of our investments in liquid assets, so that when in the event of the repetition of the San Francisco fire, or something happening in New York City, we would be in position to promptly meet our obligations. We had a small sample of it the other day at Berkeley, California. Within a week we paid out through that one series $415,000. Now, then, the market va... happened to be at the time—whatever the market value happens to be at the time you need securities you have got to liquidate. Now, that fact, that securities had gone down in any one year, is not a certain criterion that they will get up again—because I know of certain insurance companies, and personally I had a very minute investment in it, the stock in the New York, New Haven & Hartford Railroad Company. That was con-

sidered one of the gilt edged investments of the country, well around $250 a share, and paid ten per cent dividends. It was considered a hallmark up in New England to have some of those securities in your box. I think it is selling at about seven dollars now; and there isn't any sign of it going back.

Q. Now, as your business in fact is conducted, computing the underwriting profit or losses on the basis of earned premiums, incurred losses and incurred expenses, does the fact of your making or losing money upon your securities [fol. 1105] have anything to do with the rate of insurance by the use of that present method?

A. Not a particle.

Q. In other words, if your securities—I am not taking in to account the question of solvency for this moment, and whether your securities are government bonds or wildcat oil stocks and perhaps are entirely safe or very unsafe, speculative or conservative, does it have any relation whatever to the rates, under the method which you have stated is now in use for the calculation of premiums?

A. None whatever. In fact, in our underwriting department, if you might call it that, the officers in charge know only after the happening of the event what occurs in the financial end, and twice a year I presume we have the figures as to the result of the experience in the financial end, but it doesn't enter into our calculations nor do we consider it when we are considering underwriting matters.

Q. What is the importance of re-insurance in the business of fire insurance—I use that last term carrying with it the allied lines of insurance—what is the importance of re-insurance?

A. Well, I——

Q. (Interrupting.) And you may make any contrasting examples between large companies and new or small companies that you see fit.

A. Speaking from our own company—for our own company—when I first came with them, say twenty years ago, it was of course a much smaller company, and the underwriters naturally felt that its resources would not permit of exposure of too great a proportion of its surplus on a single hazard or a conflagration area. Then the fact of

[fol. 1106] computation enters in. The property owner is not concerned when he takes a policy in our company, for instance, whether it has large or small liabilities in some block and if its requirements call for a $5,000 policy he doesn't want to be told that our limits are such that we can't take over $3,500 or $4,000; that he would have to seek elsewhere for that extra $1,000.

Then again, sometimes the underwriter, as I said, looking over their aggregate liabilities in a certain area, place a necessary maximum beyond which they cannot accept liability, so that in the case of original risks a large area conflagration district, they protect themselves by passing a part of their liability to other insurance companies. That system grew up and we had the entry of a good many foreign companies whose entire business was that of reinsurance. We now have a number of American companies who specialize, if you might use that word, in taking reinsurance for other companies. As our income and our resources grew we felt that we could extend our liabilities, and we did so by dropping off re-insurance. Does that cover your question?

Q. I will ask one or two other questions designed to draw it out a little further. What sound reason is there for small companies re-insuring part of the liabilities they have taken on, with respect to the operating charges upon the reserves that they are required by law to keep for the item of unearned premiums?

A. Well, a rapidly growing company with a small surplus is very apt to be choked to death, as we call it—strangled with the reserve they are obliged to supply from their sur- [fol. 1107] plus and that can be continued to the point where the surplus is not adequate to supply that additional reserve.

Q. The alternative then is to re-insure it down so that their surplus is adequate, or have their capital impaired and be out of business?

A. Or discontinue business for a while until the liability runs off.

Q. Does the—do the facilities for placing re-insurance of acquired lines or accession to other companies operate as a necessity to a greater extent with a small company

with a small reserve or the larger company with a large surplus?

A. Naturally to the small company—or a large company with a small surplus. The surplus is the determining factor.

Q. In other words, the less surplus the company has to draw on the greater the necessity for some re-insurance arrangement?

A. Yes.

Q. Do you have any other companies under the general management of the officers—yourself and associates, besides the Home Insurance Company?

A. Yes.

Q. What?

A. Franklin Fire Insurance Company, the Philadelphia, and the City of New York Insurance Company of New York.

Q. Are the officers of those three companies the same persons?

A. Practically. The smaller companies do not have the same number we have, but the same chief executives.

Q. Is the same general management of the fleet of the three companies?

A. Entirely.

[fol. 1108] Q. In the figures that have been filed here relating to the underwriting experiences of these three companies I am advised, without having examined them personally, that as to one of those companies it discloses an underwriting profit for the period of years from 1917 to 1921, inclusive, and as to one or both of the other companies an underwriting loss during that same period?

A. That is true. The Home and the City, I believe it is, had a profit and the Franklin had a loss.

Q. How can that happen when they are all under the same management and the same officers?

A. They are not the same agents and not the same policy holders.

Q. What has that got to do with it?

A. If they all had the same agents and all had the same policy holders and all had a proportionate amount on each risk, their experience would be identical. In other words, if we pooled the business of the three companies the under-

writing experience would be identical, but just as it will happen in an agent—a city or on an individual risk, to bring it out to its final analysis—the Home might insure one of three dwellings in a row, the Franklin and City might insure another, and you might burn one of them and only affect the result of one company, but in order to affect all three alike all three must burn. The same will happen in the City's business, one year one company will have a good business in the city and the next year a loss, and vice versa, and that goes along through the states, but averaged over the whole country combined; loss and expense doesn't vary very greatly over a period of years.

[fol. 1109] The Referee: Do these three companies operate in substantially the same territory?

The Witness: Substantially the same. The two smaller companies operate only within the United States, and they do not transact marine business to the extent the Home does, nor do they operate in foreign countries nor do they write hail and rain business for their own account; while we supply the facilities to the Franklin City agents to write hail business, for instance, the business is entirely reinsured. That is playing with blue chips for a small company.

Q. Was the period from 1917 to 1921, inclusive unusual with respect to the expense experience of your companies as compared with anterior periods?

A. Our expense ratio was less during that period because of the increasing volume of business we transacted. The overhead spread over a larger volume and reduced the total.

Q. And that is the amount of expenses were greater, but with relation to the premiums written were smaller—the proportion was smaller, in other words?

A. Yes.

Q. Now, as to the amount of the expenses—I am seeking to indicate the question of salaries and so forth—did they remain stationary or did they increase during that period?

A. No, they increased. We certainly had to increase salaries very substantially during the war period, traveling expenses went up, railroad fares, hotel bills, printing and stationery. Printing and stationery almost doubled during that period.

[fol. 1110] Q. There have been some interrogations in this case as to the practice of companies with respect to inspections of property as to value at the time of writing the policies, or prior to that time, and the advisability and propriety or necessity for so doing. Take first premiums upon real estate, I am eliminating the personal property for the present because that takes in perhaps a different problem—take premiums upon real estate, and what is the fact as to whether your agents in writing policies upon such risk have knowledge respecting the property in general and how is it acquired and what is the method of doing business in that respect?

A. The agent, taking the average agent in the smaller towns, he is thoroughly familiar with locations and districts. If a responsible citizen comes in and asks for a policy of $5,000 on his dwelling house, located at such and such a location, the agent would refer to the map, if he was not familiar with the property—he would be familiar with the location—and he could get a fair idea as to whether that amount was excessive or inadequate. Take the average city and the premium on a $5,000 house policy might be—well, from ten to twenty dollars. If you consider the expense involved in making a complete survey as to the value of the property it would take almost the entire premium to make such a survey that would be of value and even then you are up against this proposition: There was an instance of a company in Washington, D. C., that practically failed several years ago, and had a tremendous amount of its assets tied up in a home office building, and the receivers [fol. 1111] wanted an appraisal of the value of that building. They got three different appraisers at work on it, and the result showed a difference of three hundred thousand dollars in the appraised value of that building. Now, that experience—and nobody claims that an insurance agent is an expert valuer—differs to that extent, and it is fair to assume that there would be a difference of ideas on smaller properties. Our theory is, and I think it is sound, that the owner of the property is the best judge of its value.

Q. Do you insure persons or property?

A. Persons.

Q. And does the character and standing and reputation of the person seeking insurance enter into the problem of whether he shall have insurance or not?

A. That is the great consideration in our business, is the character and standing of your policyholder.

Q. And is it the effort of your company to select agents who usually have an acquaintance in the community in which they are acting as agents, so as to enable them to form judgment as to the responsibility of persons applying for insurance?

A. That is one of the important qualifications.

Q. Now, as to inspections of personal property, such as stocks of merchandise and household furniture and similar kinds of personal property, if inspection for value were made at the time of the writing of the policy what criterion would that be of value at thirty, sixty or ninety days thereafter?

A. None. Property might be removed; it might be added [fol. 1112] to or partially destroyed or taken away or sold.

Q. In your judgment, from your experience in this business, would such inspections of real and personal property—by which I mean attempts to value each particular parcel of property sought to be insured upon taking the insurance—be the reasonable method of conducting your business?

A. It would produce a prohibitive cost.

Q. Of what value would it be after you had made it, as to personal property particularly?

A. Valueless.

Q. About how many fire insurance companies are there doing business in the United States?

A. About two hundred. I am referring to stock companies, of course.

Q. Yes, that is what I was directing attention to. And so far as you know is the method of calculating underwriting profits or use of the earned premium, the incurred losses and expense basis used by those companies universally in their conduct of their own affairs and in their relations to state and federal governments?

A. It is obligatory in the case of state and federal governments, and so far as I know I never heard of a company calculating it otherwise for its own purposes.

Q. What do you mean by being obligatory as far as the federal government is concerned?

A. That is the basis of our federal income taxes.

The Referee: Is the bulk of your company's business, Mr. Kurth, urban or rural?

[fol. 1113] The Witness: I should say rural—this is, distinguished from the large cities?

The Referee: Yes.

The Witness: Yes, the bulk would be rural. And I think especially as regards the Home more so than perhaps any other company. We have a very large farm department which of course confines its activities to farm properties.

The Referee: About what size city or town, by population, would you classify in speaking of it in that connection as rural?

The Witness: Twenty-five thousand and under would be rural.

The Referee: Do you think that a more thorough method of inspection as to real or personal property would tend to reduce losses?

The Witness: I think that if the funds could be provided some other way than through charging the policyholder for it, undoubtedly some reduction in the losses could be made by the immediate careful inspection of every risk that is insured and a thorough-going investigation of the character of the owner. I think there is more stress perhaps to be laid on the latter than on the former, but the inspections become valueless so soon after they are made. In case of attempted fraud, for instance, you take the whole water-front of this city, with the immense value stored there, you would have to have the risk inspected every day in order to arrive at some idea of the value.

[fol. 1114] The Referee: That would apply as to the property but would it apply so forcibly to the character of the insured?

The Witness: No, sir.

Of course, I wouldn't want you to think for a moment that no attention is paid to that end of it. We depend first on the local agent who is in close contact with the policyholder. I am speaking more especially in the smaller communities.

Then we have the loss information service of the National Board. Every fire within the last five years has been tabulated there, if it has been sustained by members of the National Board. Every man who has had three fires, even

though perfectly honest, is listed there. If he has a suspicious fire the record is kept there of it and it is valuable for the members of the National Board, and of course the index is sent around to the members. Every company as far as I know keeps close tabs through the commercial agencies as to the financial standing and prospects—more especially the prospects of a liability of a manufacturer or a merchant.

Then we have what is known as the Credit Information Bureau, which gives generally—well, general statement of condition in certain lines of trade. For instance if, as was the case last summer, it began to look as though there was a crash due in the fur trade—that thing was announced through bulletins to the insurance companies, who then started an investigation of their own risks in the fur line.

We have, as I said before, three hundred men scattered around the country, field men, special agents, general agents [fol. 1115] and adjusters, who keep us informed of local conditions, and whenever there is information regarding an undesirable assured from any of these numerous sources it is always tabulated at the head office, and if his name crops up we have the check on it.

Q. If, for instance, there is a boom at Goldfield, and then the gold plays out there and you have insurance in that location, is that the kind of a thing you watch—as to the local conditions?

A. Yes.

Q. And does it happen that a regular agent writes a policy and it is canceled by your field man or somebody else above the local agent, even over his protest?

A. Oh, yes. For instance, a newcomer will come to a town and start in business. A good many agents will find out where he came from and then ask us to look him up, look up his record at a previous location. And in that way we keep in touch.

Q. Who is the man that is in immediate—who is immediately above the local agent, who supervises and looks him over?

A. The field man.

Q. What are the general natures of his business?

A. Appointing agents, supervising, inspections and collections.

Q. Suppose that an agent fails to pay his agency balance, for example, and it is thought desirable to terminate his agency, who has that to do?

A. Field man.

Q. If the local agent is loading you up with undesirable risks on undesirable persons and in an undue amount, who [fol. 1116] checks him and finds out what he has and whether he is doing a business properly or carelessly?

A. There is two of them who would immediately discover that. The head office through a series of fires or the field man making his regular tour of inspection.

Q. Then do you have in addition general agents, to the city agents?

A. Well, so far as the public is concerned—that is, I am speaking solely for our company—the city agents, general agents and inspector are synonymous as far as their duties are concerned. I mean they all perform such duties as I have outlined, but for a number of reasons we give them different titles—and also, of course, different salaries.

Q. Well, they are in varying degrees of supervisory power over the local agent, who is the person in direct contact with the person seeking the insurance?

A. That is a fact.

Q. Now, when you speak of the federal law, is this what you are talking about, in here (indicating pamphlet)?

A. Yes, that is the wording of it.

Q. I intend to ask the witness a question predicated on it. For the court's information, I will read a part of the federal statutes. From Sec. 246 of the Public Act No. 98 of the 67th Congress, "An act to reduce and equalize taxation, to provide revenue, and for other purposes." I will only read a small part of it here. Federal Statute of Congress:

"(4) The term 'underwriting income' means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

[fol. 1117] (5) The term 'premiums earned on insurance contracts during the taxable year' means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result

so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.

(6) The term 'Losses incurred' means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year.

(7) The term 'expenses incurred' means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted [fol. 1118] from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by Section 247."

By Mr. Folonie:

Q. Mr. Kurth, the term used in there "expenses shown on the annual statement approved by the National Commission of Insurance Commissioners," does that refer to what you have been calling the convention form of annual statement?

A. It does.

Q. Is the method of computation of underwriting profit as so defined in the federal statute in accord with your views as to the proper method of calculation of it?

A. Put it the other way. I am in accord with their methods.

Q. Well, you agree with each other, then?

A. Yes.

Q. You mentioned the Commissioners Committee on Fire Insurance with which you and your committee dealt. Can you state who the members of that committee were at the beginning——

A. (Interrupting.) At the beginning, end or during the whole session?

Q. Any way you can state it. I just want to get the general personnel of it.

A. Well, at the end of the conferences the members of the committee were the Commissioners of Virginia, Illinois, Kentucky, Vermont, Rhode Island, New York, Massachusetts and Arkansas. At various times in addition to some of those we had North Carolina, Missouri, Michigan, Colorado, Washington, Maine and Pennsylvania Commissioners on it.

[fol. 1119] Q. In other words, the personnel of the committee changed from time to time during that period?

A. From time to time.

Q. Did the chairman of that committee remain the same throughout, or change?

A. Colonel Button was the chairman throughout, Joseph Button.

Q. And were you the chairman of your committee throughout?

A. Yes, sir.

Q. Who were the other members associated with you?

A. There was Mr. Lopez—of course, our committees varied, too, during this period.

Q. All right.

A. Mr. Wyper, of the Hartford. Mr. Lopez of the Continental. Mr. White of the Great American. Mr. Louden. Mr. Catlin of the North America. I think that represents the entire personnel at various times of our committee.

Q. And when you came to your final agreement with these gentlemen, did any one of the Insurance Commissioners disagree or dissent from the conclusion reached by the remainder?

A. We had a unanimous agreement until a change in the committee, and Mr. — and the Commissioner of Arkansas came on, and he stated that while the question was up——

Mr. Barker (interrupting): Just a minute. This gentleman has testified very freely today about conversations he

had around the Hotel Astor, and others that he had for several years, but I think he is hardly competent to testify about a conversation he had with the Commissioner of Arkansas.

[fol. 1120] Mr. Folonie: Well, withdraw the question rather than to prolong the controversy.

You may cross-examine.

Cross-examination by Mr. Barker:

Q. Mr. Kurth, you are you say the vice president and secretary of the Home Insurance Company?

A. Yes, sir.

Q. Now, which one of the many vice presidents are you, Mr. Kurth?

A. I am—let's see—Mr. Buswell is senior vice president and Mr. Ludlum and Mr. Tyner is the financial vice president. I should say I was fourth vice-president of the Home.

Q. You are the fourth vice president?

A. Yes.

Q. Now, your company, I believe, was incorporated in 1853?

A. Yes, sir.

Q. Your capital stock at that time was five hundred thousand dollars?

A. Yes, sir.

Q. Now, in 1913 your capital stock was three million dollars?

A. Yes, sir.

Q. Of the original subscribers to your stock in 1853 who put up five hundred thousand dollars—that was fully paid, I assume?

A. Yes, sir.

Q. Now, in 1913 with a capital of three million dollars how much of your stock—how much had your stockholders contributed to that increase?

Mr. Folonie: I assume, to avoid confusion, that you mean by direct contribution rather than leaving earnings in?

Mr. Barker: Oh, yes. Money out of their pockets—if he doesn't understand it.

[fol. 1121] A. If it would save any time, I could give you the results to date, the total contribution of stockholders.

Mr. Barker: Yes.

A. The present capital is eighteen million dollars and the stockholders contributed in that twelve million and a half.

Q. Well, now, let's go back. Of the five hundred thousand dollars in 1853—now, when was the next increase, please?

A. The next increase was in '59.

Q. What was that?

A. From five hundred to six hundred thousand. The stockholders contributed one hundred thousand dollars.

Q. Then when was your next increase?

A. In July of the same year. They contributed four hundred thousand dollars more; made a million dollars.

Q. Now, of the million dollars, then, all of that had been contributed and paid by your stockholders outside of their earnings or participation in any degree with the Home Insurance Company?

A. Yes, sir.

Q. All right. When is your next increase?

A. In July, in 1864. Stockholders contributed a million dollars, making the capital two million dollars.

Q. Go ahead, please.

A. In 1870 there was a stock dividend of five hundred thousand dollars, making the capital two and a half million dollars.

In 1871 there was an assessment of a million five hundred thousand dollars, to restore the impairement of the capital by reason of the Chicago conflagration.

Mr. Folonie:

Q. What was done with the capital, was it increased or left as it was?

[fol. 1122] A. Left as it was. They were simply assessed that amount.

In 1875 there was a stock dividend of five hundred thousand dollars.

In 1913 there was a stock dividend of three million dollars, bringing it to six million dollars.

Mr. Barker:

Q. That was in '13?

A. Yes. In '21 there was—the stockholders paid in nine million dollars, six million dollars to capital and three million dollars to surplus. And in 1922 there was a six million dollar stock dividend.

Q. What do you mean by a stock dividend?

A. A part of the surplus earnings were capitalized.

Q. Now, your assets now are about one hundred million dollars?

A. About eighty million.

Q. Only eighty?

A. Yes.

Q. Now, your capital stock today is what?

A. Eighteen million.

Q. Eighteen million. Divided into par value shares of what amount?

A. One hundred dollars.

Q. One hundred dollars. Capital of eighteen million?

A. Yes, sir.

Q. And surplus of what?

A. About seventeen million.

Q. What is the value of your stock per share, now, Mr. Kurth?

A. About $340 a share, I should say.

Q. Nearly three and a half for one?

Mr. Folonie: Three and four-tenths, if you want to be exact.

A. The market value would be slightly less than three and a half for one.

[fol. 1123] Mr. Barker: Well, Mr. Leahy suggested market value to you. You answer my question.

Mr. Leahy: We submit he asked what is the value of stock. What does he mean, book value or market value?

Mr. Barker: He can answer the question without suggestions. The witness is a very smart man.

The Referee: You will probably save time if the objections are made in the usual manner. If the witness does not understand the question he can indicate that fact.

Mr. Barker:

Q. If your stock is worth substantially three and a half for one, what is its book value?

A. Book value is about two hundred dollars.

Q. Two hundred dollars. Is yours a listed stock?

A. No, sir.

Q. Not listed. What per cent of your stock, Mr. Kurth, is owned by the officers and directors of your corporation?

A. It is—I haven't the figure here. I can get it very readily.

Q. About five per cent, you think?

A. I should say that would be a fair guess, yes.

Q. Explain to the referee how and the reason for sixteen million dollar corporation and the way—eighteen million dollar corporation, with substantially the same amount for surplus, with only about five per cent of the stock owned and controlled by the officers, directors, managers and agents? How does that happen?

A. I wouldn't say agents in that. I would not say that that includes—five per cent includes all the agents.

[fol. 1124] If you will confine it to directors and officers or just the directors alone I should say five per cent. I don't know what per cent the agents own. I should say it was a mark of confidence in the management of the institution, that they are continued in office indefinitely. Mr. Snow has been a director for nearly forty years. All of the other directors have been in for a long period, and the changes, at least since I have been connected with the company in twenty years, have been through death only, among the directors.

Q. Now, take in the banking world for instance, isn't it an unusual matter to find a big city bank in New York where only five per cent of the bank was owned by the officers, directors and managers?

A. I couldn't say for the banks. I don't know.

Q. Well, take real estate loan companies or mortgage companies, wouldn't you expect to see the officers and directors and managers own substantially all of the stock?

A. I am not competent to express an opinion on that.

The Referee: Pardon me one moment. You stated a few moments ago the total assets of the company were approximately eighty millions?

A. Eighty million dollars.

The Referee: And the total capital how much?

A. Eighteen.

The Referee: And total surplus?

A. Seventeen.

The Referee: What makes up the difference?

[fol. 1125] A. The funds we have to accumulate for payment of outstanding losses; our unearned premium reserve for taxes and amounts we owe to other companies for reinsurance. If you like I can give you a brief summary of the items which compose this: Reserve for unpaid bills at the end of the year was $200,000; our reserve for taxes $1,000,000; we owed other companies for reinsurance $3,078,000 we reserved for losses unsettled and unpaid, $7,100,000; reserve premium fund, $34,000,000. And that, with the capital of $18,000,000 and surplus of $17,000,000, brings out the seventy-nine million odd thousand.

The Referee: I don't mean to interrupt counsel in asking these questions, but sometimes it enables me to keep better track of the evidence.

Mr. Barker: Doesn't bother me any.

Q. Now, with a company with substantially eighty million dollars of assets, eighteen million of capital and seventeen million dollars of surplus, you think the stock is only worth three and a half for one?

A. I don't say I think that. I think it is worth a good deal more.

Q. You know now you wouldn't take ten for one for yours, would you?

A. I would be glad to sell mine on that basis.

Q. Will you sell yours for three and a half for one?

A. Yes, sir.

Q. Then what did you mean a moment ago by telling me you thought it was worth a whole lot more than that?

A. If I had sixty per cent of the stock and could afford it I think I would pay more than three and a half for one.

[fol. 1126] Q. I see. Now, then, please tell me how much has been returned to the stockholders of your corporation since 1853 in dollars for each dollar which they have contributed to your capital and surplus.

A. The cash dividends amount to thirty-five million and some odd figures. I will look up the exact figures if you like, but that is the million figure, and there has been ten million dollars in stock dividends.

Q. Then you mean to say that only about five dollars has been returned for each one contributed?

A. If you add the stock and the cash dividends there is forty-five million dollars, of which they paid twelve and a half million dollars. Those are the figures.

Q. Now, your company, Mr. Kruth, has earned and distributed more than ninety-five million dollars since 1853, has it not?

Mr. Folonie: How much?

A. I don't figure it has.

Mr. Barker:

Q. Well, will you make a table and leave it with the stenographer—a copy of the table which you filed with the Lockwood investigating committee report, which I have, showing the amount of money returned to the stockholders of your corporation from the time of its organization in 1853 up to the present time?

A. I will give you—I can't give it to you within the million amount. We gave them in cash dividends thirty-five million and some odd. In stock dividends ten million dollars, and they contributed in cash, twelve million five hundred thousand dollars.

[fol. 1127] Q. Well, you understood my request, that you file with the stenographer a statement showing the amount returned to each stockholder for each dollar contributed, from the time of the organization of your company?

Mr. Folonie: You don't mean to each stockholder. You mean the stockholders, don't you?

Mr. Barker: Each dollar for each stockholder's return. I want to know what each dollar contributed in 1853 has paid during that time. You can get that very easily, can't you?

A. Well, now, let's get this clear. I have here a statement of the amount of capital from the beginning of the company showing whether it was paid in cash or by stock

dividend. This begins in 1853 and as I say shows the increase in capital—the capital for each semi-annual period and the increase, whether by stock dividends or cash payments to stockholders. In addition to that I understand you want the amount of cash paid in dividends?

Q. That is right; returned in any way to stockholders for the money which they contributed.

A. Yes, sir.

Q. Now, then, your company during the period from '17 to '21 inclusive paid dividends to its stockholders of what? Give me your dividends.

A. 1917 we paid one million——

Q. (Interrupting.) Give me the percentage, if you can.

A. I haven't the percentage. I have the dollars. You see there has been some changes—well, here they are. 1917, 25 per cent, plus 1 per cent Red Cross dividend; 1918, 25 [fol. 1128] per cent; 1919, 25 per cent; 1920, 25 per cent; 1921, 25 per cent.

Q. Now, your company has averaged 25 per cent since its organization in 1853?

A. No, sir.

Q. It has not?

A. No, sir.

Q. Do you know from your records there what it has averaged from 1853?

A. Not the average. I can give you the dividends for each year during that period.

Q. You haven't estimated the percentage per year?

A. No, sir.

Q. Include that percentage in the statement which you file with the stenographer for me, will you please?

A. Would you mind letting me see that Lockwood schedule so that I will recognize just what that was?

Q. Yes, I have it in lump form.

Mr. Polonie: The witness just wants to identify it.

Mr. Barker: Coneh, Nevlin & Company (?) have the schedule—if you haven't it, 22 Broadway.

A. All right, sir.

Q. Now, as a corporation and officer thereof you are naturally elected by the stockholders of your corporation?

A. By the directors.

Q. Yes, sir; and the directors by the stockholders?

A. The directors by the stockholders.

Q. Your liability then is to the stockholders of your corporation?

A. Yes, sir.

Q. And you recognize no liability to the policy holders, except to pay them in case of losses, and treat them properly?

A. Yes.

[fol. 1129] Q. The policy holders, as suggested, have nothing to do with the way in which you conduct your business?

A. None whatever; not having contributed to the capital.

Q. And they are entitled to no return from your profits?

A. Except they be stockholders.

Q. Yes, sir. And that is the distinction which you told Mr. Folonie existed between stock companies and mutual companies?

A. One of the fundamental differences, yes, sir.

Q. Now, in the mutual companies they contribute and pay for their policy on what you call the old line rate, your rate, do they not?

A. I assume so. I am not familiar with that part of their activities.

Q. The mutuals and the reciprocals are your big competitors in this country?

A. I wouldn't call them big comeptitors.

Q. Well, little competitors, then.

A. They are competitors; let it go at that.

Q. So being vice-president of a great corporation you naturally watch the activities of your competitors?

A. When they affect us, of course.

Q. The mutual companies, as you know, inspect each piece of property very carefully before they insure it?

A. I beg to differ with you there. They do not inspect each piece of property.

Q. The reciprocal companies, you are familiar with them also, are you?

A. Some of them, yes, sir.

[fol. 1130] Q. New York Reciprocal Underwriters, you wouldn't call a small company, would you?

A. No, sir.

Q. Big as your company, isn't it?

A. Well, I don't care to give any comparisons.

Q. As a matter of fact the New York Reciprocal Underwriters is larger than the Home, isn't it?

A. I will accept your statement of it. I don't know.

Q. Don't you know its assets today are one hundred and twenty millions, as against your less than a hundred?

A. No, I don't know that to be a fact.

Q. Well, if its assets are one hundred and twenty million it is not a little company?

A. I didn't say that it is a little company. I am willing to take your statement as to its size.

Q. I don't want you to take my statement about matters — which you are much more familiar than I am. Now, the mutual companies covering this same five year period which I have inquired about throughout the country, charging your same rates, have returned to their policy holders a little more than twenty five per cent, have they not?

A. I don't know.

Q. You don't know what the mutuals have returned?

A. No, sir.

Q. Your expense ratio of the Home is about 42 to 45 per cent?

A. As a matter of fact, it's less than 40 per cent.

Q. Well, 38?

A. 38 I should say.

Q. That means that of each dollar collected your expenses are 38 cents?

A. Yes, sir.

[fol. 1131] Q. You know as a matter of fact that the expenses of these mutuals are less than 20 cents, don't you?

A. I don't know. I have heard it is but I have heard of one reason why it was given that so low as that, and that was the attorney in fact——

Q. (Interrupting.) Mutuals, I am referring to. There are no attorneys in fact in mutuals, are there?

A. You were speaking of both. No, there is not attorney in fact in mutuals.

Q. No. And you know as a matter of fact now that they have returned more than twenty five per cent to their policy holders, charging your rates and providing insurance during the same period of time, don't you?

A. I do not know, sir.

Q. You would not say they have not done that, would you?

A. No, but I can't testify that they have.

Q. Now, as to the reciprocal companies, you say they have an attorney in fact?

A. I believe that is what they call their managing organization, or the corporation.

Q. You know, don't you, without——

A. I believe that is to be——

Q. (Interrupting.) You testified rather freely as to the meetings around the Astor Hotel?

A. I knew about that and I was there and I knew about those.

Q. But there are several hundred rooms around there and you didn't know what took place in all of them?

A. Well, I only testified as to those I attended, in certain rooms.

[fol. 1132] Q. Now, then, as to the reciprocal companies, they charge originally your rate when they issue an insurance policy?

A. I believe so, yes, sir.

Q. At the end of the year, in case all of that rate has not been consumed for expenses and losses, they distribute the balance to the policy holders?

A. That is the theory of the reciprocal insurance.

Q. Their expense rates, though, covering this same period yours was 38, was considerably less than 20, was it not?

A. I don't know. I have heard that it was below 25 per cent, but I will explain this, that one reason assigned—now, I am not giving this as a fact, because it is simply told me—and that is that reciprocals when they quote a rate of one per cent and the attorney in fact deducts his commission, twenty-five per cent or whatever it is, and then reports the seventy-five rate, and from that the expense ratio or whatever it is, less than twenty-five, or less than twenty, is figured. Now, if that would be the fact then there would be a very unfair comparison to say that their expense ratio was twenty or twenty-five and ours thirty-eight.

Q. Well, in the way you figure it it would make their expenses lower if they figured on the 75 ratio instead of the 100?

A. Well, I am just saying that my story that I heard was that 20 cents was figured on the 75 and not on the 100.

Q. I see. Well, now, then, you haven't taken an opportunity or availed yourself of the privilege of investigating, for instance, about the return to the policy holder and the matter of the expenses of the reciprocal companies?

A. No, sir.

[fol. 1133] Q. Would you be surprised to know that during this five year period the New York Reciprocal Underwriters was able to write policies throughout the United States and return at the end of the year every dollar which they had collected from policy holders, making their money on their investment business alone? Would that surprise you?

A. It would not, if their assets are one hundred and twenty million. I assume they did not do some forty million of premiums, then. I don't know what their premiums were.

Q. Yes. Do you recognize that insurance being collected in advance and the privilege being given of investing it that that end of the business brings in, in the course of events, a considerable sum of money?

A. Undoubtedly. There is no question about that.

Q. Now, then, you have a ratio of 38 per cent for expenses. You think that is a reasonable ratio?

A. I think it is a very satisfactory ratio.

Q. If it gets any higher than 38 you would think they were getting too high?

A. That is a matter of opinion. I think that the volume of business—I am speaking now for the Home—on the volume of business we transact that 38 per cent is the minimum on which it could be conducted in the present efficient manner it is conducted by the Home.

Q. When you collect your money on these insurance premiums in advance you necessarily loan that money on securities of some kind?

A. Or purchase them.

[fol. 1134] Q. Now, you have what you call an unearned premium reserve?

A. Yes, sir.

Q. Now, you don't set aside and earmark, as you call it, a certain sum of money?

A. No, sir.

Q. To represent your unearned premium reserve?

A. No, sir.

Q. As a matter of fact, there is no such thing in the insurance world as an unearned premium reserve; that is a misnomer, isn't it?

A. It is a liability.

Q. Well, you have no unearned premium reserve, have you?

A. We maintain—yes. We maintain in our liabilities a sum representing the unearned premiums on our unexpired policies.

Q. But it is not segregated, is it, and set aside as a reserve?

A. It is in the liabilities.

Q. Well, I am speaking about in fact.

Mr. Folonie: Physically separated, you mean.

Mr. Barker:

Q. Whether or not in fact it is set aside. I don't care what you call it, liability or asset. Is it in fact set aside and is there such a thing as an unearned premium reserve known to the insurance world?

A. We maintain a liability of thirty four million dollars. It is a book entry, like most of our assets here. They are represented on our books by an entry. It is represented on our books by an entry in our liabilities.

Q. Then you mean this 38 million or 34 million which you have represents money which you have collected from policy holders which you are holding there as a liability?

A. No. It means if our policy holders wanted to cancel their policies we would have to pay them that amount of [fol. 1135] return premium. Now, the states require us as a test of solvency that we set that sum down in our liabilities.

Q. You hold that there then as a liability?

A. Yes.

Q. Solely and exclusively subject to the policy owner, to the return to the policy owner in case of cancellation?

A. Oh, no, there may be losses thereunder.

Q. Well, will you take the unearned premium reserve to pay losses?

A. If the portion represented by the individual policies must be paid in losses besides—the unearned premium on the individual policy cancelled by the payment of a loss is immediately realized and therefore used in part to pay losses.

Q. Well, is this unearned premium reserve which you refer to held by you for among other things the purpose of paying losses, if they occur?

A. Yes, sir.

Q. Then it is an asset of your company for the purpose of paying losses, isn't it?

A. A liability—it is a liability, General. The unearned premium reserve is a liability and required by law to be set up.

Q. All right. Now, you have a surplus fund also, have you?

A. Yes, sir.

Q. Well, let us take the two funds, surplus fund and the unearned premium reserve fund. Both of them are liable to the payment of losses, aren't they?

A. Yes, sir.

Q. Both of them are held by your company as assets for the payment of losses?

[fol. 1136] A. All liabilities must in all cases be offset by assets, otherwise we become impaired and insolvent.

Q. Then you mean your unearned premium reserves are both assets and liabilities?

A. No, the reserve as such is a liability.

Q. Well, each subject to be used for the payment of losses?

A. Assets which offset it are used for the payment of losses.

Q. I don't think you understand me. Is the unearned premium reserve itself subject to the payment of losses?

A. The funds represented by it are.

Q. Then to that extent it is an asset of your company?

A. The funds that offset it are, yes.

Q. Well, let's see.

A. You can't pay losses out of a liability.

Q. That is what I can't understand myself, and we will find out whether we can or not.

Mr. Folonie: Have you an annual statement blank with you, Mr. Kurth?

A. Yes, sir. You mean complete?

Mr. Folonie: Yes.

A. No, I haven't.

Mr. Barker:

Q. Now, then, you have 34 million dollars, you say, of unearned premium reserve—your company?

A. Yes, sir.

Q. That is represented by what—money, stock, notes, bonds, or what?

A. And obligation to our policy holders.

[fol. 1137] Q. That doesn't hardly answer the question. Does—is this 34 million represented by what: money, notes, stocks, bonds, or what?

A. That and all our assets—all our liabilities are covered by certain investments, including cash in bank, stocks, uncollected agency balances an accrued interest.

Q. Then your 34 million unearned premium reserve is money and other securities?

A. It is offset by those. It is not money. We don't take the unearned premium reserve and take securities or bank balances and say this much is unearned premium reserve.

Q. Well, let's see. Some time or other you get 34 million dollars that you call unearned premium reserve?

A. Yes, sir.

Q. At some time or other that was in money, was it?

A. Contributed by stockholders, or earnings from the business or otherwise. It was accumulated in some manner.

Q. Sometime it was in money, though, was it?

A. Sometime, yes, sir.

Q. All right. When it came to you in money what did you do with it?

A. We invested it.

Q. Then you have instead of the money the investments?

A. Yes, sir.

Q. And those investments are subject to be used for the payment of losses?

A. Yes, sir.

Q. The same as your surplus?

A. Yes, sir.

Q. Then they are assets, the same as the surplus?

A. No, sir.

[fol. 1138] Q. No, sir. They serve the same purpose as your surplus?

A. In providing for them we were obliged to provide assets which we could use for the payment of losses, the same as the capital was provided, and as a liability.

Q. Then there is no distinction between your investments and your capital, your surplus or your unearned premium reserve?

A. No, sir.

The Referee: Let's see if I get your idea there clearly, please, Mr. Kurth: In your books in obedience to the law you charge up as a liability a certain sum for unearned premiums?

A. Yes, sir.

Q. Now, you have possession of the money which paid those unearned premiums, although the premiums are not yet earned?

A. Yes, sir.

Q. That money you have invested as your judgment dictates?

A. Yes, sir.

Q. The charge on your books is the liability to which you refer?

A. Yes, sir.

Q. The money itself or the securities in which the money is invested represent assets which may be used for the payment of unearned premiums or any other liability of the company?

A. Yes, sir.

Q. There is no fund separate set aside and apart known as the unearned premium reserve fund?

A. No. No assets set aside to offset, no, sir.

The Referee: That is all.

Mr. Barker:

Q. Now, then, you told Mr. Folonie that you were chairman of the insurance committee to arrange with the insurance commissioners what was a reasonable underwriting profit?

A. Yes, sir.

[fol. 1139] Q. That was in view of the fact that a few states in the Union have a statute allowing you a certain underwriting profit, notably Colorado, is that right?

A. I presume so. The commissioners' convention presented those questions to the national board and we went into conference on them, as I stated.

Q. Yes, and the purpose of that of course was those states that have special statutes, like the State of Arkansas, the State of Colorado, they allow insurance companies a certain underwriting profit. You are familiar with those statutes?

A. I think so.

Q. Arkansas provides five per cent underwriting profit, which you remember, I assume?

A. Yes, sir.

Q. So that your members of your committee and the insurance commissioners agreed that the Arkansas statute and the Colorado statute allowing five per cent was a proper charge or proper allowance?

A. No, we did not agree with that. We agreed that for the purpose of the broad general question of what constitutes a reasonable underwriting profit five per cent underwriting profit, three per cent variable, as I called it before, for conflagrations, was reasonable, provided it was calculated in a manner in which it was agreed upon.

Q. And the purpose of that was to comply with the statutes which allowed you a specific underwriting profit?

A. I can't go beyond the purpose of the convention in asking those questions. They asked the national board as representing the companies to supply the reply to certain questions and then we, as I say, went into conference and agreed upon the answers.

[fol. 1140] Q. Now, after your committee and the insurance commissioners agreed on a five per cent underwriting profit, the State of Arkansas passed its statute allowing you a five per cent underwriting profit, did it not?

A. No, the Arkansas statute was prior to the agreement.

Q. Now, of course, in statutes of Missouri, that do not use the words underwriting profit at all, you provide no returns for underwriting activities, those were no considered by your committee because those were no concern of yours? You were only dealing, in other words, with states that allowed you an underwriting profit?

A. And the broad general question.

Q. Now, has the Home Insurance Company ever earned a five per cent underwriting profit?

A. Yes, sir.

Q. Has the Franklin?

A. Yes, sir.

Q. What is the other company?

A. City of New York. No, sir.

Q. You know, do you not, Mr. Kurth, that a five per cent underwriting profit is an enormous profit.

A. No, sir, I don't.

Q. With the activities of your company in the handling of its investments covering the period in question, from 1917 to 1921, your company would have earned more than twenty per cent had it not received a cent from its underwriting activities, would it not?

A. Now you are getting in to the financial side and as I said before I am not competent to discuss the results of the financial end of our business. Mr. Tyner will be at your service any time you like and he can give you those figures in detail.

[fol. 1141] Q. Well, send him over as soon as you get a chance and I will examine him.

A. All right, sir.

Q. Now, then, you are able from the records you have in front of you to tell me that during this five year period you paid your stockholders a twenty five per cent dividend, did you?

A. Yes, sir.

Q. Now, then, in addition to the earning of the twenty-five per cent and returning that to your stockholders, how much during all that five years did you put to surplus?

A. That is from January 1, 1917——

Q. To '21, inclusive.

A. 1917 our net surplus was $12,651,748. In December, 1921?

Q. Yes.

A. That will be January, 1922, according to these statements. January, 1922, surplus, $80,964,068. Now, '17 to '21—during that time the surplus increased $8,312,420, of which the stockholders contributed three million.

Q. Well, how much does that make that you put to surplus account?

A. $5,312,420, excluding the cents.

Q. Your capital stock during that period of time averaged what—the average capital during those five years?

A. For all but six months of that time the capital was six million dollars.

Q. So you put to surplus substantially 100 per cent.

A. Well, 90 per cent, say, to be more exact.

Q. And returned 25 per cent to our stockholders?

A. Yes, sir.

Q. About 125 per cent, and are you the gentleman that wanted your underwriting profit raised to 8 per cent?

A. About 10 per cent.

[fol. 1142] Q. Oh, 10 per cent?

A. Yes, sir.

Q. Don't you know that if you had an underwriting profit of 10 per cent covering those five years in question that you would have returned to your stockholders over 600 per cent?

A. I don't know.

Q. Well, figure it for me. I figured it.

A. I am willing to accept your statement.

Q. And 600 per cent is a reasonable return to your stockholders per year?

A. We are speaking of the business as a whole and not some individual cases. Now, if you will take one of our other companies during that period you will observe we paid in four hundred thousand surplus—the stockholders paid that, and at the end of the period we had two hundred thousand dollars less than we began with.

Mr. Folonie: What company is that?

A. The City of New York. In fairness, it is——

The Referee (interrupting): Mr. Kurth, how do you account for the marked difference between two companies in the same line of business and in the same period of time.

A. We took over the City of New York Insurance Company's management in 1920. It had been, to put it mildly, incapably managed. They had entered into contracts of liabilities that perhaps they were forced to by being small or they were mistakes in judgment. In the three years that we have been managing it, we have been endeavoring to correct that situation. The expense ratio has been reduced very decidedly during that period, but it will take perhaps three years more in order to get them on what we call an [fol. 1143] even keel.

The Referee: In this particular instance, with reference to these companies—without being unduly modest—the management is the essential difference between the failure of the one and the success of the other?

The Witness: Entirely.

Mr. Barker:

Q. Now, then, Mr. Kurth, as vice-president of the Home Company, at the end of the year or at some stated time your company gets together and balances its accounts to see whether or not there has been a profit or loss during that year?

A. Yes, sir.

Q. Now, how does your company figure a profit or loss?

A. On the incurred—earned and incurred basis that has been referred to here.

Q. Now, you first start out with your capital, do you? You consider your capital in arriving at profit and loss?

A. No, sir. We take our earned premiums, incurred losses and incurred expenses and that is called an underwriting profit or a loss. Then we take the interest and dividends account and the appreciation or depreciation, or loss or profit on the sale of securities. That becomes the investment income. It is the sum of the two that represents the combined resources of the company.

Q. And when you go to return a dividend to a stockholder you are not concerned at all about the capital? You don't base that on capital at all?

A. No, sir.

Q. That is, when you return a twenty-five per cent dividend to your stockholders, that twenty-five per cent doesn't mean twenty-five per cent on your capital?

[fol. 1144] A. What I meant was, if I understood your question correctly, that in determining our earnings we figure them on income. It is the percentage of earnings or losses on our underwriting income and not on our capital. In speaking of the result of the last year's business, we will say it showed a profit of two per cent——

Q. (Interrupting.) On what?

A. On the premiums; earned premiums. We don't say that would represent four or eight or twenty per cent on our capital. We speak of the percentage earnings on our income.

Q. And you return it to the stockholders in the same way?

A. That is on the capital.

Q. Then in returning to your stockholder you return him a certain dividend which is figured against the amount of stock which he holds in your corporation?

A. Yes.

Q. And that represents his profit?

A. Yes, sir.

Q. Regardless of the volume of business or anything else, it represents his profit?

A. That is his profit. If it is paid from surplus it is paid from capital account, but that is his return.

Q. His profit, you would call it. Now, then, don't you think then that if you settled with the policyholder in accordance with your capital account, your capital account should be considered in determining the earnings or losses of your company?

A. No, sir.

The Referee: Do you mean policyholder, by that question?

[fol. 1145] Mr. Barker: Stockholder.

Mr. Folonie: The witness understood policyholder and so answered it. General—if you wish to ask him further.

Mr. Barker: Oh, all right.

Q. You said that you settle with your stockholder and pay him according to the stock which he owns in your corporation?

A. Yes, sir.

Q. Now, having settled with him on the basis of your capital, don't you think it fair to consider as to the earnings or losses of your company that it shall also be figured on your capital basis?

A. The policyholders, you mean now?

Q. I didn't say anything about that. Read the question, Mr. Blume.

(Question read by the reporter.)

A. I think he has no interest in that.

Q. Your stockholder?

A. He has never expressed, so far as I know, any interest in it except to acknowledge receipt of his dividend check.

Q. Why, certainly. He has to be—six hundred per cent, wasn't it, that he had gotten?

A. No. I am not saying what per cent he got, General. I haven't made up any such figures.

Q. Well, moderate, then. One hundred per cent, and he will not complain. You wouldn't complain if you had stock in a corporation returning to you year by year one hundred per cent, certainly?

A. I certainly would not. I haven't any stock in such a corporation, though.

[fol. 1146] Q. There are only a few, Mr. Kurth, in existence. You would be fortunate if you had some of this stock.

The Referee: We will take a recess now for ten minutes (which was accordingly done.)

Mr. Barker:

Q. Mr. Kurth, profit and loss invariably as to a corporation is figured either on the capital invested or the investment of the company, is it not?

A. No, sir.

Q. Well, let's see now. Suppose if you and I have a telephone plant over here at East Orange, is it—and we have put in $100,000 in capital in that company, and at the

end of the first year after the payment of all depreciation charges, anticipating the liabilities, taxes, every form of expense, there remains in our treasury six thousand dollars. Now, what do you say that corporation earned that year?

A. Six thousand dollars.

Q. As against $100,000 capital?

A. I may be quite different from the ordinary individual—I would want to know what the turnover was and what rate that represented on the turnover.

Q. Then when we come to get our dividends, you and I, we would have six thousand dollars available, would we?

A. Yes, sir.

Q. And if that was distributed to us as the stockholders, that would represent our dividend?

A. Yes, sir.

Q. Now, what per cent would that be?

A. Six per cent.

Q. Six per cent?

A. Yes, sir.

[fol. 1147] Q. Regardless of how much business we did, would it?

A. Yes, sir. Our dividend would be six per cent, but our profit ratio would be whatever the six thousand bore to the turnover on the business transacted.

Q. But you told me, as I understood you, that you had no dealings with the policyholders; that you were solely representing the stockholders of your corporation?

A. Yes, sir. They pay my salary.

Q. Yes, sir. So that for the purpose of our telephone comparison you and I, being the only stockholders of the corporation, we wouldn't care anything about the public, what business we did with them, we would get six thousand dollars, wouldn't we?

A. The six thousand dollars was the result of a certain amount of business transacted.

Q. All right. Suppose that year that we did $200,000 worth of business.

A. Yes, sir.

Q. And on that $200,000 worth of business we earned this $6,000.

A. Yes, sir.

Q. And we paid ourselves six per cent. What profit did the corporation earn that year?

A. Three per cent, on its turnover.

Q. Three per cent on its turnover?

A. Yes, sir.

Q. Perhaps you didn't understand my question. What profit did the corporation earn that year?

A. Three per cent.

Q. The corporation earned three per cent?

A. The corporation earned three per cent.

[fol. 1148] Q. And yet we distribute six per cent?

A. Yes. That is the—the earnings represented six per cent on the capital, therefore we paid six per cent.

Q. Then the corporation earned six per cent?

A. I wouldn't say so.

Q. Suppose then that we did a million dollars' worth of business and at the end of the year we had this same six thousand dollars as a profit. How much would you say in that event the corporation earned?

A. That would be six-tenths of one per cent.

Q. That would be six-tenths of one per cent?

A. Yes.

Q. Yet we distributed to the stockholders six per cent?

A. Yes, the earnings represent six per cent on the capital.

Q. Then suppose that year we did one hundred million dollars' worth of business and at the end of that year we had six thousand dollars?

A. Six one-hundredths of one per cent.

Q. And the stockholders of course would be satisfied to have returned to them the six one-hundredths of one per cent?

A. No, no. They ought to be satisfied with the percentage—whatever the earnings represented, six-tenths of one per cent or six one-hundredths of one per cent represented when it was calculated against the capital.

Q. Then if the stockholders demand six per cent when you had only earned less than one per cent, that would be unreasonable?

A. Not at all, because the one per cent might represent a great deal more than six per cent on the capital.

[fol. 1149] Q. I see. Now, then, you take a bank, for instance. You are familiar with—are you a director of several banks here?

A. No, sir.

Q. Mr. Snow, your president, is?

A. Director of one bank, and Mr. Buswell is a director of one bank.

Q. And by the way, those are the banks you deposit most of your money in?

A. I think we have deposits in those; amongst the eight that we deposit with.

Q. Now, this Mr. Buswell, your vice-president, and Mr. Snow, being officers of the bank, at the end of the year that capital stock of that bank stands as one million dollars. At the end of the distributing period all the expenses have been paid, every charge taken care of in every way, there remains one hundred thousand dollars; now, you couldn't figure that that bank had earned ten per cent that year until you first found how much money they had loaned to the people of New York, could you?

A. I don't know. I have never attempted to figure the earnings of a bank.

Q. Well, your company is a corporation, isn't it?

A. Yes, sir.

Q. And a bank is a corporation?

A. Yes, sir.

Q. Is there a different rule for figuring the rule—the earnings of one corporation, than another?

A. I presume there are.

Q. You think there are?

A. I judge so, from the tenor of your remarks; and apparently I was mistaken in figuring the earnings on the telephone company. That leads me to believe there is a difference in the method.

[fol. 1150] Q. Let's see. In the insurance world you have a capital stock of eighteen million dollars?

A. Yes.

Q. Now, before you can tell what the earnings are of that corporation for any one year, regardless of what amount has been distributed to the stockholders and what amount has been set aside as surplus, you have got to know the volume of business done, don't you?

A. Well, that is not synonymous with what we have been talking about, General. I was telling what the percentage of earnings was of an insurance corporation. I did not mean for a moment to insinuate that you could not tell the earnings on the capital stock until you had your percentage unless you knew the amount in dollars and cents—once you knew the amount in dollars and cents. But my position is that in my calculation of the earnings on an insurance company I want to know the amount of turnover—the amount of earned premium, before I can calculate the percentage of profit.

Q. That means volume of business?

A. Volume of business, yes, sir.

Q. Now, then, on this bank, then, before I can figure the percentage of earnings we have got to know the amount of money that was loaned to the people of New York and elsewhere, eh?

A. No, I don't know about banking business. I am not a banker and I don't pretend to know how they calculate their profit.

The Referee: You differentiate, do you, Mr. Kurth, between earnings and profits?

The Witness: Yes, sir.

[fol. 1151] The Referee: Now, if you will kindly make that distinction, it may clarify the matter.

The Witness: The percentage of earnings mentioned—any given percentage of earnings of an insurance company means in my mind the percentage based upon the earned premiums. The resultant sums in dollars represent necessarily an entirely different percentage on capital stock which their dividend ratio is based.

The Referee: And that you call profits?

The Witness: Profits.

The Referee: You calculate your dividends on one basis and your earnings on another?

The Witness: Earnings on another, yes.

Mr. Barker:

Q. Now, then, you figure the profits to make dividends and you figure the earnings to make rates?

A. That is the point.

Q. And that inures greatly to your advantage?

A. I don't see wherein it does.

Q. I see. Now, then, on this committee of which you were a member you got out a pamphlet which is headed, "What Constitutes a Reasonable Underwriting Profit and the Method of Determining the Same," following your conference?

A. That was the beginning of the conference—yes, sir.

Q. And this is your product (referring to document)?

A. Our committee's product. I don't claim——

Q. (Interrupting.) Of course, you are a modest man, you don't claim all the credit for this.

Among other things you say this:

[fol. 1152] "The company receives the money as its own and holds it as its own and may do with it what it sees fit, except as it is restrained by some statute. It is wholly immaterial to the insured what the company does with the money or what disposition it makes of it, provided it remains solvent and is in position at all times to pay any contractual obligations."

That is your idea today?

A. Yes, sir; being a stock company and not a mutual company.

Q. Now, in speaking of your unearned premium reserve, you say this:

"The company may use it in the payment of any claim or indebtedness of any kind which it may have or may use it in the transaction or furtherance of its business in any manner and the proceeds thereof inure solely to the benefit of the company."

A. Yes, sir.

Q. And that is what you think of the unearned premium reserve today?

A. Yes, sir.

The Referee: Mr. Kurth, does the fixing of uniform rates tend—on a basis that will enable the average company to continue in business—tend to enhance the profits of the companies most efficiently managed?

The Witness: Necessarily so.

The Referee: That is the obvious and inevitable effect of it?

The Witness: It is.

The Referee: That is all.

Mr. Barker:

Q. Of course, you understand that in fixing a rate the management of camp-nies, the impreper handling of companies, all of that goes into the general total in fixing a [fol. 1153] rate for all of the companies and that rates are not fixed solely on the experience of the good companies, are they?

A. They cannot be.

Q. No, sir. Now, then, Mr. Kurth, you say that from '17 to '21, inclusive, you returned to your stockholders twenty-five per cent? You say that during this same period of time you started on a six million dollar capital, a little over five million dollars to your surplus account. Will you kindly figure for me just a moment with the figures you have in front of you the earnings of your company for that period of five years, taking into account the twenty-five per cent return to the stockholders and the little over five million dollars which you put to surplus?

Mr. Folonie: What five years, please?

Mr. Barker: '17 to '21. That is what he gave me.

(Witness calculates.)

A. 7.13 per cent, on the turnover.

Mr. Barker:

Q. Thirteen per cent?

A. Seven decimal thirteen per cent.

Q. Perhaps you didn't understand me, Mr. Kurth. You testified that from '17 to '21, inclusive you returned to your stockholders twenty-five per cent dividends each year?

A. Yes, sir.

Q. You testified that on a six million dollar capital during the same period of time you put to surplus five millions and what?

A. $312,000.

Q. $5,312,000. Now, that would be, you see, a little over ninety per cent which you added to your surplus.

A. Ninety per cent of what?

Q. Of your capital?

A. Yes.

[fol. 1154] Q. And having added ninety per cent to your capital and paid your stockholders twenty-five per cent you in fact earned more than one hundred per cent on your capital?

A. No. My figures were based on the turnover. As I explained before, in figuring results of an insurance company I figure the percentage of profit on the turnover. The resulting earnings will be 5 or 105 or whatever figure you may determine upon the capital.

Q. Well, now, you and I are speaking of capital now. You paid the stockholders 25 per cent dividends and that was on the stock which they had in your corporation?

A. Yes, sir.

Q. That is the way you settled with them?

A. Yes, sir.

Q. Then you added $5,312,000 to your surplus account?

A. Yes, sir.

Q. During that same period?

A. Yes, sir.

Q. Therefore, as far as your capital account is concerned, your earnings were about 115 per cent?

A. More than that.

Q. Well, how much more?

A. If you are figuring on capital, the earnings, which as I said, represent 7.13 per cent on the turnover, amount to—we could have paid on the result of those operations in those five years, both from investments and from underwriting, I would say 212 per cent, for the period of five years.

The Referee: Or one-fifth of that annually?

A. Annually, yes, sir.

[fol. 1155] Mr. Barker:

Q. Now, one-fifth of that annually would be how much each year?

A. Forty two and one-half per cent.

Q. So that the earnings of your corporation during that period of five years as against your capital account were 42½ per cent?

A. Approximately, yes, sir.

The Referee: Does that include the total earnings of the corporation from all sources?

The Witness: From all sources; appreciation in securities, which was some factor, I don't know how much, and an accumulation of assets and profits which began in 1853, seventy years ago.

Now, that same profit applied to the capital and surplus would be less than one-third of that amount because in most of that period the surplus owned by the stockholders, and which could have been distributed to them in profits but they let them remain in the business for further accumulation and earnings, or to back up their contracts, the earnings would be, as I say, less than one third—I haven't figured the exact amount, but it could be figured out.

The Referee: Do you mean to say that the sum which is made up of the two items of the dividends actually declared on capital stock plus the amount added to surplus in the five year period mentioned had been accumulating since the organization of the company.

A. It all did not—it did not all appear during that period, but that means that that surplus at the beginning of that period was $12,000,000, or that $12,000,000 plus the $6,000,000 capital were invested in the business, in- [fol. 1156] vested in securities, and of which I mentioned some this morning.

Those produced earnings, some of them were profitable investments and produced profits that way. Some merely increased in market value without being sold during that time. That also is included in the earnings. In some, decrease in value, that was taken into consideration. But in figuring the capital it is wholly unfair to take merely the amount designated as capital without considering the stockholders' property, amounting to $12,000,000 at the beginning of that period, which also belonged to the stockholders.

The Referee: Can you tell me approximately within what period of time the dividends which were declared in the five years under consideration and the amount which was added to surplus in that period was accrued?

The Witness: The dividends were paid, 12½ per cent in January and July of these years—of each year. I can tell you how the surplus acted during January and July——

The Referee (interrupting): Perhaps I didn't make my meaning quite clear. I was not inquiring as to the time

when distributed, but the time within which they accrued, were received or earned.

The Witness: I can confine it to six months' periods and tell you the actual operations within three—six months during that time; that is, we make up a complete financial [fol. 1157] statement twice a year for our directors; 30th of December and 30th of June. Perhaps that is what you desire to know.

Mr. Folonie: No, he wants to know if you made that out of what you accumulated during this period or prior periods, and if prior periods, how long.

The Referee: This: In round numbers you paid during the five years, as I have understood your testimony, 25 per cent in dividends on capital stock, did you?

The Witness: Yes, sir.

The Referee: You have also added something more than $5,000,000 to your surplus?

The Witness: Yes.

The Referee: Now, then, within what period of time did the company earn those dividends on that surplus?

The Witness: Well, perhaps the best answer would be to just quote the surplus at each six months' period; that will show the up and down and net revenue of profit or loss. So—January 1, 1917, the net surplus—I will read, leaving off the cents, $12,651,000. In July, 1917, the surplus had dropped to $10,127,000; January of the following year it was $13,001,000; July, 1918, it was $10,730,000; January, 1919, it was $14,561,000; July, 1919, it was $15,949,000; January, 1920, it was $15,825,000; July, 1920, it was $14,898,000; January, 1921, it was $12,451,000; July, 1921, it was—that is where the $3,000,000 had been paid in by the stockholders—it was $17,684,000; January, 1922, it was $20,964,000.

[fol. 1158] Mr. Barker:

Q. Then it jumped from 1917 from ten million to over twenty million in 1921?

A. Twelve million to twenty; $12,600,000. Of which $3,000,000 had been paid in by the stockholders; leaving a net of $5,312,000 increase.

The Referee: And the 25 per cent dividends were in addition to that?

The Witness: In addition to that.

Mr. Barker:

Q. What caused the fluctuation in that surplus account, excluding the three million paid by the stockholders?

A. Market values to a greater or lesser extent, I should imagine. For instance, in the largest difference—market values, I would say, a favorable or unfavorable underwriting experience for any six months' period.

Q. Now, Mr. Kurth, that does not represent the real conditions in your company, because you mark off your losses on stock but you do not include the earnings you had received from the stock you received, do you?

A. Oh, we include every dollar that ever comes into the possession of the company.

Q. For instance, in 1919, you started off on account of your investment account—have you got the figures there as to what you charged off in '19?

A. I have not, no, sir. I would like to make this explanation, however: That whatever was charged off by reason of the sale of securities at a loss, the result would have been precisely the same had we held onto the securities and reduced their value on our books to the actual market [fol. 1159] value at the end of the year. So far as this investigation goes, and its purpose, it does not make the slightest difference whether you actually sell a security and register the loss or whether you merely mark down the value to the actual market value at the end of the year. And I might add this: That whatever the figures were for 1919, I would like to say that for the year 1921 the appreciation of securities, which is also included in this, was just under $5,000,000.

Q. So that that year alone, in 1919, $5,000,000 of charging off your securities but still retaining them, you got that back in 1921?

A. I don't know how much we marked off in 1919. I happen to recall that in 1921 the market came back, as they called it, and the difference was close to $5,000,000.

Q. Now, your company, I think Mr. Kurth, shows a loss in its investment in 1919 of $2,581,149; in 1919. Now, that simply means that securities having gone down you marked that as a paper loss, doesn't it?

A. I don't know. Now, I couldn't tell you the actual fact. I think that that represents the loss represented by the actual sale of the securities, but I want to make the point that so far as this record goes, it doesn't make the slightest difference in the statement whether we sold the securities and registered the loss or whether we simply were forced to mark down the value at the end of the year. The result would be precisely the same. In other words, those securities that were sold that year, if I understand the figure rightly, were worth two and a half million dol-
[fol. 1160] lars, or whatever that figure was that you just read, less than the figure represented on our books.

Q. Now, then, if in 1919 you marked off, without the sale of the securities, $2,500,000, representing the market loss but not the actual loss on those securities, and in 1920, when you later—those securities came back so that the loss of $2,500,000 was overcome, your statement would not show that, would it?

A. It shows it, yes, sir; it does show it. The statement on file with the Missouri Department shows every transaction, every security we bought, the price we paid for it, the date we bought it and from whom we bought it—and the same with the sales, prices we paid for it, prices we got for it, to whom we sold it, and the date.

Q. That is not exactly what I asked you. If, in 1919, you marked a bookkeeping loss of $2,500,000 off without the selling of your securities, your stocks having gone down that amount on the market, and then *if* 1920 the market had recovered and those stocks were worth $2,500,000 more than they were worth in 1919 on the market, you don't charge a profit that year of $2,500,000 made on——

A. Certainly. It shows right in our surplus. The surplus reflects all profits or losses, from whatever source.

Q. And the surplus depreciation, increase and decrease, which you read to me a moment ago, reflects solely the condition of the market there?

A. Amongst other things; the underwriting results are [fol. 1161] merged in there; all operations of the company—insurance business, the financial end, investments, dividend income, all are reflected in the net surplus.

Q. Well, then, look at your statements which you have before you and show me the amount of your underwriting profits for the years '17 to '21, inclusive.

A. I didn't bring those blanks along.

Q. Do you think they average 5 per cent?

A. I know they did not.

Q. Did not?

A. Did not average 5 per cent.

Q. Then if you returned or could have returned 41 per cent to your stockholders, more than 35 per cent of that was earned on your investments?

A. That is—assuming your presumption is correct, I will say that the answer is yes.

Mr. Folonie: May it appear in the record that Mr. Kurth has no figures on the underwriting before him in making his answer?

Mr. Jacobs: He specifically says, though, he knows it was less than 5 per cent; more than 36 per cent, earning, really.

Mr. Folonie: Well, I want the record to show he——

Mr. Barker: I don't believe he is wrong. He impresses me as bring a pretty smart fellow.

Q. Mr. Kurth, this unearned premium reserve, you told Mr. Folonie, with your investment end of that—that your investment end of that amounted to between 2 and 3 per cent. You don't mean that, do you?

A. Yes, sir.

[fol. 1162] Q. What do you loan your unearned premium reserve at, that it only brings you between 2 and 3 per cent?

A. That goes into the fundamentals of the unearned premium reserve. In the first place, a policy is written, we will say—getting back to the $100 premium for five years; we will say that policy is issued as of January 1st—of that $100. The 40 per cent—being to expenses or reserve for expenses—taxes, local agent's commissions—but under our requirements, of the state law, in order to protect the policy holders the company must set aside immediately that policy is issued in its liabilities $60. Now, the $70 is supplied not from the policy holder directly, or at least, put it this

way: The company does not receive that $100; it receives—it receives $60 for which it immediately sets up a liability of $90. Now, that additional $30 is supplied from the surplus of the company.

The Referee: Let me understand that right there. The premium is a $100 premium?

A. Yes, sir.

The Referee: Assume that that is paid to the agent at the time the policy is delivered, that it is $100. How much of that does the agent remit to the company?

A. If it is on the five year class, he probably remits $75.

The Referee: The company then has in its possession actually $75?

A. At the end of 90 days.

The Referee: When the agent remits it, whenever that may be?

A. Yes.

The Referee: Now, then, the company divides that into various funds and distributes it, as I understand it, but it actually has possession of the $75?

[fol. 1163] A. Yes, sir. Of which it pays—I will give you our percentages here for the year 1922. 3.89 represents field men's salaries. Those are the inspectors, adjusters, and their expenses; salaries: Officers, directors, overtime, pensions, 3.71; advertising, printing and stationery—stationery and supplies for the agents, 1.21; taxes, state and federal, 2.74. Then the rent of home offices, branch offices, maps that I have referred to, furniture and fixtures at the head office, local branches, local board, rating associations, inspection bureau 2.94. Leaving roughly, we will say, $60 for the company; which, on an average it receives 90 days after the policy is issued. That is, the close of the month in which it is issued. In the meantime the company sustains a loss, it has to pay current expenses and must maintain a considerable amount of liquid fund, cash in bank, on which it receives 2 per cent—to speak of our own company.

Mr. Barker:

Q. Where does it receive that 2 per cent from, that is what I asked you?

A. I am getting to that. On the part of it that is kept in the shape of cash it receives 2 per cent.

Q. Now, who from?

A. The bank in which the money is deposited. This 60 per cent then is invested. Our average rate is a trifle—it goes sometimes under and sometimes about 5 per cent. This 60 per cent is then invested for nine months.

Q. How?

A. In various securities I have called off here, government bonds, $15,000,000; state and provincial bonds, $5,000,000; county and municipal bonds, $4,000,000; railroad bonds, $17,000; other corporation bonds, a trifle under $6,
[fol. 1164] 000,000; railroad stocks $4,000,000; bank and trust company stock $580,000; other corporation stock, $11,000,000.

The Referee: When you speak of that nine months, I assume you take that merely to round out the year from the date the policy was written?

A. Yes.

Mr. Barker: Q. Now, you figure that per cent against all these expenses which you charge against that?

A. Yes, sir.

Q. Now, you know Mr. Alfred M. Best, do you Mr. Kurth?

A. Yes, sir.

Q. He is a well known man in the insurance field?

A. Yes, sir.

Q. He is the publisher of several insurance publications?

A. Yes, sir.

Q. Standard authorities in the insurance field?

A. I can't quite concede that.

Q. Well, you may disagree with some of his conclusions but he is recognized as an insurance authority, is he not?

A. Not in the insurance business.

Q. Not in the insurance business?

A. No, sir.

Q. When did Mr. Best cease to be an authority since the Lockwood investigation report?

A. I didn't know as he ever had a standing as an expert in the insurance fraternity.

Q. Now, merely for the purpose of asking you a question and so we will understand, being an insurance man, better than I can explain it to you, I want to call your attention to this statement and ask you if this is what you under-
[fol. 1165] stand the unearned premium reserve to repre-

sent. Mr. Best has this in his work: "Experience has shown that there is a very large profit in the liability reserve, unearned premiums; that the law has required to be set aside for extra safety. Of this reserve approximately one-half is profit. It is nowhere shown upon the books of the company. The liability reserves are invested in securities and bring in returns. Ten companies"—including the Home—"are earning in nearly every case over $1,000,000 by way of return on this reserve. They are putting that earning of this reserve fund into their own profits and surplus and using it for their own purposes. If the income from that reserve were credited to the fund they could reduce their premiums about $10,000 per annum in the United States, if they wanted to." Now what does Mr. Best mean by that, you being an insurance man?

A. I am not sure that I know exactly what he means, but applying it specifically to the Home, Mr. Best evidently maintains that any earnings on the part of our assets should be credited to the policy holders. That, we maintain, is not proper. Our position is this: That what the policy holder pays us, once he pays us his premium, that money belongs to us, except as he has claims on it for return premiums or for losses or for other service; that so long as we maintain a position of solvency that we can meet his legitimate claims on us, he has no interest or concern in in what we do with it. As an illustration, having the Pacific Coast territory, I make occasional visits to that field. The practice is to lay out our route and buy a round trip ticket. [fol. 1166] There is a saving in the rate. The money we pay to the railroad company, I am told by the secretary of the railroad company, immediately is treated as their own. I, as a passenger, or the holder of that ticket, haven't the slightest interest or concern except that sometime I may change my mind and desire to get back the value of the unused portion of that railroad ticket; as a prospective passenger on that road, I haven't the slightest interest or concern in what the railroad company does with that money, except I would like to be assured that if I want the unused portion—the value of the unused portion, that they are in a position to pay it to me. I think that position represents the policy holder's position with reference to an interest in the unearned premium reserve. Or, to get a more homely

instance, when I was a youngster up home we bought cream from a certain milk man and we left the pail or jug outside of the door mornings and he put in a quart of milk, or whatever was ordered. We bought in advance a dollar's worth of milk tickets at a time—it was a good deal cheaper then than it is now—and we left a ticket in there. I can say we didn't care a hoot what the milk man did with that dollar paid him except that we wanted to be sure he was going to be able to deliver the milk until the tickets were used up, or be in position to redeem the unused portion.

The Referee: Referring to your statement with reference to earnings—or the investment, rather, of the unearned premiums, as I recall you stated that $75 of the assumed $100 came into the hands of the company; about $15 out of [fol. 1167] the $75 was allotted to the various items you mentioned, and deposited in banks on which you drew about 2 per cent.

A. 2 per cent.

The Referee: The remaining $60 you are free to invest at whatever rates are available for investment, so that on that $75 there would be whatever per cent you received on the investment of the $60 plus the amount paid by the bank where the $15 was deposited, so long as it was deposited there?

A. Assuming the average portion was deposited in the bank and earned 2 per cent and another portion invested for nine months, the average would work out between 2 and 3 per cent on the original $100.

The Referee: On what?

A. On the original $100.

The Referee: Your answer seems to be based on the hypothesis that the $70 would be paid at the expiration of the ninety day period.

A. Yes, sir. That is the average. I am just speaking of the average. Sometimes we get it sooner and sometimes as our statement shows, we don't get it within the ninety days.

The Referee: I was going to ask if that was the average time within which it was paid over to the company?

A. That is the average time.

Mr. Leahy: Forwarded by the agent?

A. Forwarded by the agent.

Mr. Barker:

Q. Now, Mr. Kurth, in explaining just now you say that [fol. 1168] if you buy a round trip ticket to the coast and you conclude probably not to come back that a certain portion of that money would be returned to you if you didn't use the ticket, upon request. Now, do you think the Interstate Commerce Commission, in figuring the earnings of that railroad would eliminate any sum for tickets that might be returned, or would they consider the money which you paid a railroad for that ticket as a part of the earnings of that company?

A. In view of the very small fraction of the receipts of a railroad company that are paid on time contracts, I think probably they ignore it, although I don't know.

Q. You know that in figuring the rate of a railroad the Interstate Commerce Commission would take all of the earnings of a company, find out what they amounted to, including your ticket?

A. I presume they would. That would be very natural. I don't recall of any five or ten year trip tickets on any of the railroads like we have in the insurance business.

Q. You have five years. Have you some ten years, now?

A. Yes.

Q. Oh. Let's see how far you go. Have you more than ten years?

A. I presume we may have an occasional policy for a longer period.

Q. Is ten years a common policy?

A. It is in certain districts.

Q. They run from one to ten years then?

A. Yes, sir, from 56 seconds to ten or twenty years. I believe we issued a rain policy the other day for perhaps 100 seconds, down in Mexico.

[fol. 1169] Q. This morning, Mr. Kurth, you told Mr. Folonie that if your stockholders couldn't participate in the returns on their stock without being subjected to having their investments considered in arriving at a rate that they would not buy stock in a company with such an extra hazard. What did you mean by that?

A. If they went into a purely investment proposition as unaffected by the hazards of the insurance business, they would organize an investment company and buy securities

and sell them and take the returns or the profits or the losses, as they might happen to be, as their judgment developed, and forget about San Francisco burning up, or any other city.

Q. Well, San Francisco never cost your company a cent, did it?

A. The city?

Q. Yes.

A. About $2,250,000 in that one fire.

Q. Now, who paid that $2,250,000?

A. The stockholders paid that.

Q. The stockholders paid that?

A. Yes, sir, because—out of accumulated profits.

Q. What did you add to your insurance rates throughout the United States after 1906 to take care of that?

A. I believe there was a nation-wide advance of 10 or 15 per cent, I wouldn't say positively. It didn't last long, though.

Q. Now, the insurance premiums today—the fire insurance premiums in the United States today—amount to about one billion dollars, a little over a billion dollars in the last three years, didn't they?

A. That includes mutuals and reciprocals.

[fol. 1170] Q. What were your stock?

A. Not that much.

Q. Fire stock will run a billion in 1922, won't it?

A. No, sir.

Q. How much?

A. Not over seven hundred million.

Q. All right. Some mutual companies were doing business out there, weren't they?

A. I don't believe so. I don't recall that any were involved.

Q. Don't you think any mutual companies were doing business in San Francisco in 1906?

A. I don't recall of any being involved.

Q. You increased your rates ten or fifteen per cent and passed that to the policy-holders of the United States, didn't you?

A. We endeavored to pass it on.

Q. Well, you did, didn't you?

A. I am not sure about that. My recollection is that there was at least an attempt at a nation-wide advance in rates. If it succeeded—it only succeeded in part and only lasted for a very short while.

Q. Insurance is on a cost plus basis—if you had all the extraneous conflagrations and you increased your rates to take all those?

A. Theoretically that is the practice.

Q. So that insurance is written on what you call the cost plus basis?

A. I wouldn't say so, no, sir.

Q. Well, let's see if it is not. The San Francisco fire amounted to about $350,000,000, did it?

A. Yes, sir.

Q. Now, if you add 15 per cent on $700,000,000 of premiums, how long does it take to pay that?

A. We didn't have $700,000,000 in 1906.

[fol. 1171] Q. Well, Mr. Kurth, you know, don't you, and haven't you testified several times today as to a conflagration, you assess the state a million dollars and you make the rest of the United States pay the difference? That is your theory?

A. That is the—that is quite a difference; theory from fact. That is the agreement or the ideal condition as between the companies and the commissioners. In practice it hasn't worked out; it hasn't worked out.

Q. Will you please ascertain for me when your company ceased charging the extra hazard of between 10 and 15 per cent after the San Francisco fire in 1906?

A. I will get that information.

Q. You say you are not charging it now?

A. Absolutely. It certainly did not last beyond the year 1907. I know that. I know also that it did not apply to the whole country. It was not possible to collect it.

Q. Well, but when a conflagration like the San Francisco fire occurs in the insurance world you raise the rate to take care of the conflagration, don't you?

A. We attempt to, yes, sir.

Q. Yes. So those things iron themselves out?

A. It ironed out a good many companies in the process, it flattened them out, I mean.

The Referee: Just at that point, may I ask you when the conflagration hazard of which you have spoken became a feature in the insurance world?

A. That is the—that is quite a difference; theory from the beginning, the conflagration hazard. The big London fire, long before our time——

[fol. 1172] The Referee (interrupting): Well, of course that is the necessary hazard of a fire insurance company in the general business. I was using the term in which I understood it to be used in this investigation, relative to a 3 per cent allowance.

A. It first became subject to a decimal percentage in these discussions with the insurance commissioners. As I say, when our company, for instance, takes the position that a 10 per cent underwriting profit is justified owing to the hazards of the business, a part of that is for the purpose of covering conflagration losses; extraordinary, the unexpected, the unavoidable; but the commissioners, in analyzing this 10 per cent—and some of our own members, I might say, too—some of the companies allocated arbitrarily one-half of that to conflagrations. Then in the discussions and compromises and finally agreement, it was reduced to 3 per cent, to meet the views of some of the commissioners that the banking profits ought to be considered, and instead of making it fixed at 3 per cent it was made a variable figure, so that as the National Board collates the experience from conflagrations it will be determined over a period of years whether that 3 per cent is sufficient or too high, and accordingly it can act in accordance with the facts as they develop.

Mr. Barker:

Q. I was speaking about 1906. That was in 1919. You had no conflagration reserve in 1906?

A. We established a conflagration surplus immediately after that, though.

[fol. 1173] Q. To take care of your losses?

A. No, a repetition of it; not the business as a whole; our company.

Q. Now, a conflagration in a sense is a helpful thing to insurance companies, is it not?

A. Not at all, no, sir.

Q. Hasn't it been your experience that after conflagrations people insure more heavily?

A. No, sir.

Q. They take advantage of insurance more than they ever took before?

A. No, sir. Not materially so. It has helped in this respect—but that does not alter the fact that a conflagration is not a benefit to anybody.

Q. I am not speaking about the moral side of it.

A. It helped in this respect, if that can be called a help, and I think it is a very material help, that when our inspectors visit a factory and point out defects in construction or handling of materials they will listen to it, but that is only for a very short while.

Q. What you mean is that if a poorly kept part of New York should be burned, tremendous losses occur, your company would be more careful about its other risks in New York?

A. Not at all, sir. I mean when we went to other individuals in New York, as our inspectors do, and pointed out accumulations of rubbish in the basement or steam pipes too close to woodwork or improperly cared for gasoline or explosives, the owner would listen to them and more readily comply with the requests for improvement.

Q. That is because he has had the lesson of the big conflagration?

A. Yes, and it is fresh in his mind—but that doesn't last so long.

[fol. 1174] Q. Now, the San Francisco fire increased the volume of your business enormously as the years rolled by, as a direct result of it, didn't it?

A. No, sir. Our business, in any number of years afterwards, increased in larger proportion and larger amount than it did the year following the Frisco conflagration. If you like, I will give you some figures. In 1906 the premiums of the Home were $9,712—written premiums. This is the turnover. In 1907 they were $10,333,000. In 1908, $10,394,000.

Q. That was a direct increase each year?

A. Yes. Let me figure—let me give you the figures, though.

Mr. Leahy: Give him the figure a year or two before.

A. $2,683,000 before that.

The Referee: That is 1905?

A. Yes. 1904, they were $8,491,000. In 1916, they were $19,000,000-odd. 1917, $25,000,000; 1918, $31,000,000; 1919, $35,000,000; 1920, $45,000,000. There were not what you would call major conflagrations there to stimulate the business.

Mr. Barker:

Q. But conflagrations are considered in the insurance world as a stimulus to insurance business, aren't they?

A. I don't consider them as such, no, sir. Our experience shows otherwise.

Q. Now, elliminating the moral view, of course, nobody wants a fire, any more than anybody wants to die—but experience teaches us we do have fires and that we do die. Therefore, we carry accident and life insurance and fire insurance. Now, insurance companies, after a big fire, the attention of the nation is focussed on that fire, and it re- [fol. 1175] sults in increased activities—taking out of new policies, doesn't it, as a matter of course?

A. No, sir, I wouldn't say so. Our experience does not bear that out. And I will point out another feature in San Francisco we found a good many owners under-insured. What I mean is not ninety per cent insured, but under fifty per cent insured. The fire in Berkeley, here the other day, showed the citizens across the bay had no more followed the lessons of San Francisco in being adequately insured than they did in Frisco.

Q. Of course, that has been seventeen years ago.

A. Well, that is a lesson which ought to stick for some time.

Q. Is my experience unusual—my neighbor's house in my block took fire last spring, and that called my attention to the fact that my house was not insured for what I thought it should be, and I increased my insurance. Is that an unusual experience?

A. I would say it is unusual. It is—I will give you another experience of a man in the insurance business who let his policy expire in 1907, didn't renew it, and it burned

in 1908. There was the effect on him. Both were unusual, I would say.

Q. Does your company set aside a reserve today to be known as a conflagration reserve?

A. Not ear-marked as such. We did for a few years following the Frisco fire carry what we call a conflagration surplus.

Q. Where did you get that?

A. Took it from our earned surplus and set it aside—earmarked it as conflagration surplus.

[fol. 1176] Q. In addition to the increased cost of insurance which you pass on to the policy holder?

A. I don't get you.

Q. You raised your rates after the Frisco fire to take care of that conflagration?

A. Yes, I have testified to that.

Q. Yes, and then in addition to that you created a reserve for future fires?

A. Well, if I get your meaning. We didn't so increase our earnings that we could take the additional profits and set them aside. We took from profits already earned and in the company's possession and took a certain sum and set it aside and called that a conflagration surplus.

Q. And you carried that for a few years and then put it with the general assets of your company?

A. Merged it with the general surplus.

Q. And today you have no conflagration reserve?

A. Not as such. It is in there, in the surplus of $17,000,000 to which I have testified, and which is to take care of the unusual, the unexpected, the fluctuation in securities; all of the hazards to which we are subject. Otherwise, we would pay it all out in dividends.

The Referee: Without regard to whether there was a fund so earmarked, has the thought of the conflagration hazard made any change in the rates?

A. It has changed the—it affects the underwriting judgment of the companies. For instance, take Boston: In the old days Boston was considered perhaps the most [fol. 1177] subject to a conflagration of any of the large American cities and companies kept their liability down within a reasonable percentage of their surplus in that so-

called congested area. While, as conditions improved there, putting in high pressure water main, erection of fireproof buildings and conditions thus improved, with the consequent reduction in rates, they increased their retentions in those districts to where at one time there must have been hundreds of risks, hundreds of property owners who couldn't get sufficient insurance in companies licensed to do business in Massachusetts, and I doubt if at the present time there is a single reputable merchant in the congested area who cannot obtain sufficient insurance from licensed companies. It is an ever-present danger in the insurance business with every executive—the conflagration liability.

The Referee: I gather some of your answer to be that the idea of the conflagration risk, so-called has been to affect rates?

A. Yes, sir.

The Referee: And to affect them how?

A. It, as such—well, take Philadelphia. I understand that in a certain very congested and poorly constructed district a certain number of blocks in there on which it is physically impossible to lessen the hazard by reason of the nature of the construction and the occupancy, there is a flat twenty cent charge—now, I am just speaking from memory and I wouldn't want to vouch for these, but there is a charge applied to all risks located in that area, for the conflagration hazard.

[fol. 1178] The Referee: Without referring to a specific instance, has there been any general effect upon rates—of this conflagration hazard?

A. The only evidence that I have really seen was after the Frisco conflagration, following two years after the Baltimore conflagration, then there was a general desire and a feeling, or the feeling that the rates of necessity should be increased. Competition was such that it could not be maintained and was never broadly adopted throughout the whole of the United States. I will say that every underwriter realizes the hazard, but to designate specifically that a certain percentage of every rate was intended to cover the conflagration hazard—it is not so. You can't, any more than we can say that of this $17,000,000 surplus a certain amount of that represents conflagration. Really, it is all for the conflagration hazard.

Mr. Barker:

Q. Then there is no such thing known to the insurance world as a conflagration hazard reserve?

A. Except, as I say, all of this is pledged to pay its losses, whether they are individual or conflagration.

Q. All right.

The Referee: You define a conflagration, as I understand, to be a loss where the amount involved is $1,000,000 or in excess?

A. Or in excess.

The Referee: Now, such losses occur only in fires of large magnitude, of course.

A. Yes, sir.

[fol. 1179] The Referee: Has there been any difference in the insurance business affecting rates with reference to that situation since the San Francisco fire, for example?

A. There has been no—there has been losses of a million dollars or over, but there has been no conflagrations—major conflagrations.

The Referee: No, I was not inquiring as to the fact, but as to whether or not that situation, the recognition of the possibility of conflagrations in the sense in which that term is used, that is, involving losses of more than one million dollars, has had any effect in rates in the insurance world?

A. Perhaps I might explain it this way: Theoretically, the commissioners and the companies agreed that in addition to the five per cent underwriting profit they ought to have three per cent for conflagration reserve. There was a good deal of discussion amongst the commssioners as to what should be done with that three per cent, but that was purely theoretical, because the five and the three have not been earned. Now, the conflagration hazard is recognized as a danger to the business. I couldn't say, as I said before, we can't specifically designate that any portion of the rate applies to the conflagration hazard, except in a specific instance like in Philadelphia.

The Referee: That is not quite what I had in mind, Mr. Kurth. Has the recognition of that danger had any effect upon rates, and if so, what has that effect been?

[fol. 1180] A. There must be provision to pay for losses that come from conflagrations. To get the specific instance

is the only way I can illustrate. There is a conflagration charge in that city.

The Referee: Well, Mr. Kurth, it seems to me, perhaps mistakenly, that my question calls for a very plain answer: Whether or not the recognition of the conflagration hazard has had any effect upon insurance rates, and if it has had any effect what has that effect been?

A. I will say then specifically that it is a recognized hazard and is recognized in the rates; that it necessarily, if a conflagration hazard is recognized and exists, it must be reflected in an increased rate. Does that answer the question?

The Referee: Then the answer is yes, it has had an effect, and the effect has been to increase rates, is that right?

A. That boils it down. I am sorry I didn't grasp your meaning earlier.

Mr. Folonie: Is it a separable fact in the rate, or an intermingled part of the rate?

A. It is a composite part of the whole. It is not distinguished as such.

The Referee: It contributes towards the final result?

A. Yes, sir.

Mr. Barker (resuming cross-examination):

Q. But the net result, no matter how it may be arrived at, means that when a conflagration happens the cost is [fol. 1181] pleasantly and quietly—and properly—passed on to the policy holders to pay?

A. Whenever possible.

Q. Yes, sir. So it does not make any difference to your company, from a business standpoint, how many conflagrations you have; you just pass it on to the policy holder?

A. I beg your pardon. The San Francisco conflagration not only ironed out but flattened out a good many companies, that discontinued business. It didn't affect our company. A succession of conflagrations might. I couldn't say it couldn't affect our company. If New York and Chicago and Boston and Philadelphia burned up simultaneously the stock of the Home Company wouldn't be worth three and a half times, as you called it.

Q. Yes; and if this building suddenly fell down probably everyone in this room would be killed.

A. I expect so.

Q. Just about as likely as those cities burning up on the same day?

A. I wouldn't care to predict about conflagrations.

The Referee: We will take a ten minute recess.

(Which was accordingly done.)

Mr. Barker:

Q. Now, Mr. Kurth, I will ask you—with some insurance commissioners up here at the Astor Hotel, your committee agreed with them as to the states having an underwriting profit? That five per cent was a proper underwriting profit, did they?

A. Well, the agreement is—as reached, is fully set forth in that pamphlet, and it is not limited plainly to the straight five per cent underwriting profit.

[fol. 1182] Q. The 48 states in the Union, the 48 commissioners, including the District of Columbia is 49?

A. Yes, sir.

Q. How many of them were there?

A. 23, I believe.

Q. Isn't it a fact that only six of them were there when you had this agreement?

A. Are you referring to the committee or to the convention?

Q. Convention.

A. They had a roll call and there was either 21 or 23 responded to the roll call and were present.

Q. If there were 21 or 23, that would not be half the states represented?

A. It is all that were represented at the convention.

Q. Now, then, are you familiar with the meeting which they held the next year and rescinded that?

A. Next year—that would be 1922—no, I had not heard of it being rescinded.

Q. 1921. Did they meet in Denver in '21?

A. I don't know. I didn't attend such a meeting.

Q. You never paid any further attention to it?

A. That committee was discharged from the National Board after the agreement was reached, and this year the committee was again formed and met the commissioners at Minneapolis.

Q. And did they agree again on five per cent up there this year?

A. They did not change it.

Q. Well, you didn't exactly answer my question.

A. Well, to get all the facts in the case, the Superintendent of Missouri asked that the action be rescinded, which they declined to do.

[fol. 1183] Q. And appointed a committee for the purpose of reporting back?

A. No, to get again—again the record is and the facts are that the Superintendent of Missouri was asked to send his views to all of the other commissioners and that the subject be considered by the fire insurance committee at the December convention.

Q. And is going to be passed on in December finally?

A. I don't know whether it will be finally or not, but it will be considered then.

Q. What shape would you be in if one year they agreed that 5 per cent was a proper underwriting profit and the next year that 8 per cent and the next year that 3 per cent was and the next year that 15 per cent was? Would you just have to jump around to the fire insurance——

Mr. Hogsett (interrupting): Objected to, as calling for speculation and legal opinion of the witness.

The Referee: Sustained.

(To which action and ruling of the Referee defendants by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. I am not asking you as a lawyer, but I am asking you the effect. Now, you have a 5 per cent underwriting profit. If in December they make a report of a 1 per cent, you will accept that just as gladly, I assume?

A. No, sir.

Q. Oh, you wouldn't?

A. There is an agreement in effect now, as I understand it; an agreement between two parties or bodies which cannot be altered without the consent of both.

[fol. 1184] Q. And the Missouri statute, of course, will have nothing to say about this at all; it will be settled at the Astor House?

A. The Missouri statute will settle what it covers. I don't know what it covers, now.

Q. Mr. Jacobs didn't understand your question. You said that 21 or 23 commissioners were present up here at the Astor, I believe?

A. Yes, sir.

Q. Out of the 49?

A. 49.

Mr. Leahy: There aren't 49 commissioners, are there?

Mr. Barker: The District of Columbia has one.

Mr. Jacobs: This witness is trying to say they have.

Mr. Leahy: Counsel insisted on that.

Mr. Jacobs:

Q. What do you say about Mr. Leahy's statement that all the states haven't——

A. (Interrupting.) They have the insurance supervising commissioner in every state, whatever they call them.

Mr. Barker:

Q. So there are 49 of them? I was right on that?

A. 49.

Q. Out of the 23 present, 20 of them voted up there, didn't they, or do you know?

A. All that were there voted.

Q. I see. Well, you have that record and we have it, too. Now, the next year, you know nothing about the action they took at Denver at all, I take it?

A. Nothing whatever. Was that the national convention [fol. 1185] or was it the so-called rump convention at Denver?

Q. Well, I think there is a dispute between you gentlemen as to who are regular and who are not regular, and I am not going to pass on that.

A. Nor I.

Mr. Leahy: I think the court would like to be informed as to which was the rump.

Mr. Barker: I would like to know myself.

Q. Of course, you know, don't you, that the western delegates met and rescinded that order the next year, don't you?

A. I had heard something about that. I haven't seen any official——

Q. (Interrupting.) Missouri was a member of it and participated in it, and also the fight to rescind it, didn't it?

A. You were also up at Minneapolis a few weeks ago.

Q. You are not trying to say that Commissioner Hyde is in favor of this 5 per cent underwriting profit, are you, in Missouri?

A. I guessed from his attitude his difference in opinion arose not in the amount of the profit but in the method of figuring it.

Q. That is largely true. Of course, you understand, Mr. Kurth, that our position is that commissioners and insurance agents can't get together and enact the law of Missouri, and we are not asking you these questions for the purpose of being bound by any action you take at the Aster Hotel. You understand that?

A. I quite appreciate that.

Q. Now, do you think—you say that 38 and 40 per cent is a reasonable expense for exchanging insurance contracts?

A. Under the conditions as our company operates and [fol. 1186] for them throughout the country I think it is a reasonable expense.

Q. Now, in apportioning your expenses, Mr. Kurth, each state first bears its direct expenses, that is known as its own expenses, it pays those?

A. Yes, sir.

Q. Then you take the expenses of your company throughout the United States as a whole and then the volume of business which each state does, and then you apportion that expense to that state. For instance, if Missouri produces 10 per cent of the business of the United States, Missouri is then charged with 10 per cent of your total expenses; is that right?

A. The overhead; not the actual specific expenses incurred in the state, but what we call the empirical charges—

Let me change that. The overhead charges, those that cannot be allocated to any one state.

Q. Including, for instance, salaries of your officers?

A. Yes, sir.

Q. Your president's salary, vice president's, for instance, is apportioned to Missouri, and Missouri pays its part of it?

A. Yes, sir.

Q. Your salary and the rest of it?

A. Yes, sir.

Q. Now, then, your financial agent who handles your investment, his salary is apportioned the same way?

A. Yes, sir, all salaries.

Q. All the expenses of handling your investments are apportioned in exactly the same way?

A. Yes, sir, and in the annual statement we credit underwriting with $\frac{1}{8}$ per cent of the mean invested assets and charge it to investment.

[fol. 1187] Q. You arbitrarily estimate that $\frac{1}{8}$ of 1 per cent is a fair charge for handling your investments?

A. That is the percentage that the commissioners have been prescribing for us.

Q. That the commissioners agreed to here at the Astor House too, did they?

A. I don't know where, but that is the way they furnished the blank for us.

Q. You don't know what the western representatives did at Denver about that?

A. No, sir. We were not invited to attend that meeting.

Q. But the net result is—your funds in your home office or your depositories are not segregated, but all kept together?

A. Yes, sir.

Q. Your expenses are paid out of the general fund?

A. Yes, sir.

Q. So that all of your money is put together and then you just pay your expenses out of that?

A. Yes, sir.

Q. Now, then, the Federal statute, Section 646 of the 67th Congress, is the statute which applies to the tax on your premiums—that is what you call your premium tax, is that the one that Mr. Folonie read?

A. Yes.

Q. That is an income tax?

A. Tax on profits.

Q. Yes, sir. And you have also a premium tax. Is that——

A. (Interrupting.) Federal premium tax? That has been abolished.

Q. So that now the only Federal taxes which you have are your income taxes?

A. Yes, sir.

[fol. 1188] Q. They provided that if a corporation earned more than a certain amount they pay a tax on it?

A. Yes, sir.

Q. And that is applied on the earnings or the profit of the corporation, as you understand it?

A. On the profits of the corporation.

Q. On the profits of the corporation. In order to arrive at the profits of the corporation, as you explained to Mr. Folonie, you figure your volume of business on that basis, on the basis which you have indicated, and as a result you reach profit?

A. Yes, sir.

Q. Now, then, after having reached your profit on that basis you then must figure the earnings of your profits?

A. Yes, sir.

Q. Now, you say that when you write insurance three, five and ten years, or one year, in fact, you collect a less premium—that is, if you write five years you charge 400 per cent of the premium instead of 500 per cent?

A. Yes, sir.

Q. And that is in the nature of an inducement to the policy holder to insure for a long period of time?

A. Yes, sir.

Q. And to that extent the policy holder is protected by securing a lesser rate?

A. Yes, sir.

Q. Now, then, when you take the money and he cancels, you cancel on what you call a short term rate?

A. Yes, sir.

[fol. 1189] Q. If the policy holder has paid you $100 for one year's insurance and he has carried the insurance six years, and he decides to cancel, you give him $50 back?

A. Six months, you mean?

Q. Yes.

A. No, we give him 30 per cent back. In other words, we give him back the same amount that he would have paid in excess of what he would have taken up—what he would have paid us had he taken this insurance originally for six months. In other words, we return to him the excess of what he actually paid above what he would have paid had he originally taken the insurance for six months.

Q. That is what you call a short rate?

A. Short rate, yes, sir.

Q. Now, as to the expenses of your company, the board of directors, your officers, they have exclusive control of your expenditures?

A. Yes, sir.

Q. Accountable only to the stockholders of your corporation?

A. Yes, sir.

Q. Again, insurance is written on a cost plus basis——

A. (Interrupting.) I didn't say so.

Q. (Continuing.) What I mean, expense is taken care of by the policyholders.

A. Cost plus basis necessitates ascertaning what the cost is before you make your charge. The companies make their charges in advance. If the cost is more than the receipts for it, the company stands the loss. It is not a true cost plus basis.

Q. Theoretically, you say it is? I believe your answer is that theoretically insurance in the stock companies is [fol. 11980] on a cost plus basis?

A. No, it is a strictly—let's see that answer.

Mr. Hogsett: There is nothing in the record to that effect.

A. If I said it, I want to correct it, because there is nothing about stock insurance that is the equivalent of the cost plus basis.

Mr. Barker:

Q. Let's see. If a conflagration occurs, you pass it on to the policy holder?

A. If we can.

Q. If you can?

A. Yes.

Q. Your officers manage your company exclusively, don't they?

A. Yes, but not all the other insurance companies. We can't increase rates ten per cent through this company alone.

Q. Well, you certainly don't do it by concerted action?

A. Not unanimous, certainly not.

Q. If you did you would violate the anti trust laws would you not?

A. Which state? Missouri, for instance?

Q. No, Mississippi. Have you heard of that state?

A. Well, we are not violating it now, I will say that.

Q. Then in 1920 you secured a fifteen per cent increase in Missouri—you are familiar with that?

A. Just in a general way. It doesn't happen to be part of my territory, but I will say that I am familiar in a general way that there was an increase. We will say it was 15 per cent.

[fol. 1191] Q. Yes, I think that is what the record shows that it was. Now, then, on your federal taxes, if you pay an income federal tax, Missouri pays her proportionate part of that tax.

A. Theoretically, again, yes, sir.

Q. But not actually?

A. Not in accordance—it hasn't produced the 3 per cent profit that was provided for in the agreement with the commissioners.

Q. But you had an agreement that you get eight per cent in Missouri, with the commissioners?

A. That is the general basis of a reasonable underwriting profit with the commissioners—is that eight per cent, of which three per cent represents the conflagration.

Q. Yes, but you never had any agreement that you would get 8 per cent in Missouri, did you?

A. Missouri was not excluded from that agreement on a general principle, no.

Q. All the country, you meant, did you?

A. Over the country; that each state should provide as a reasonable basis of underwriting eight per cent profit.

Q. 5 and 8—conflagration hazard?

A. Yes.

Q. And about three states of the union have passed that law for you, I believe?

A. I don't know of any state that has legislated since that agreement was reached. Colorado was prior to that time, Arkansas was, and I presume Missouri was. At least, that is my impression.

Q. Missouri has no underwriting statute at all. You are confused about that, I assume. Did you think Missouri had a statute like Arkansas and Colorado providing an [fol. 1192] eight per cent profit?

A. Haven't they a statute on that subject at all?

Q. No. I will read you that.

A. I thought they had.

Q. (Reading:) "The superintendent of Insurance is hereby empowered to investigate the necessity for a reduction of rates, and if upon such investigation it appears that the result of the earnings in this state of the stock fire insurance companies for five years next preceding such investigation shows there has been an aggregate profit therein in excess of what is reasonable, he shall order such reduction of rates as to limit the aggregate collection by insurance companies in this state to not more than a reasonable profit."

A. Well, I should think then it would be very simple matter, if the commissioners' body as a whole and the Missouri superintendent having agreed to 8 per cent, it would be a very simple matter to apply that law.

Q. Just write in 8 per cent in this statute? That would suit you all right, would it?

A. We didn't start this controversy. This agreement was reached at the instance of the commissioners; the commissioners who felt that it would be well to have an agreement between the companies and the commissioners as to what was a reasonable underwriting profit. The statute, I see, says "a reasonable profit." The earnings should be reasonable. I don't know who would be better qualified to pass on that than the qualified official of the state in ques- [fol. 1193] tion, who has the support of the insurance commissioners' body as a whole.

Q. Then you are willing to leave that to Commissioner Hyde, as to what is a reasonable profit?

A. I am willing to leave it to the agreement entered into by the recognized official of your state at the time it was entered into, and what is a reasonable conclusion of the body as a whole.

Q. You understand, of course, that the legislature did not write that in there, but we could write it in, probably. I want to find out just how far Missouri is bound by this agreement you had up here.

Mr. Hogsett: We object to that question as calling for a legal conclusion of the witness.

The Referee: Sustained.

(To which action and ruling of the referee defendants by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. You are not a lawyer, are you?

A. No, sir; unfortunately I am not.

Q. Now, Mr. Kurth, have you had much trouble on the question of over-insurance?

A. We occasionally have it, but take our company, we issue I should say at least $1,500,000, contracts of insurance a year. The percentage that become involved in losses is of course very small—otherwise the company would be put out of business. Take again another very small percentage of the very small percentage that do become involved in fires, we do find over-insurance, not necessarily trouble, because in many instances the merchants [fol. 1194] whose stock varies, goes up and down in season, rather than try to have his insurance follow by increasing and decreasing it with his stock, will carry what he calls his maximum value. If he has a loss when the value don't reach that amount there is over-insurance, but no trouble. Trouble comes with the dishonest claimant who has over-insurance; and I know even in my own family, my father felt that the adjustment of a loss was based on this consideration: That the house we lived in was insured for a certain amount; that whatever was left in the way of salvage in the case of a loss would be deducted from the face of the policy and the difference would represent the amount payable by the insurance company.

Now, being an honest man, there could be no difficulty in that instance, but it goes to show the misconception which arises in the mind of a goodly percentage of people who take out insurance.

Q. Now, every insurance policy—over-insurance, of course, results from a lack of inspection?

A. No, sir, not entirely.

Q. Inspection you think would not help that much?

A. It would help it to some extent for the time being, but when you issue a contract anywhere from one year to five years, conditions may vary so that an inspection or a valuation at the time the policy was issued would be valueless a very short time afterwards.

Q. Now, your investments, I see, as you have stated here, consist of the different items which you have enumerated, [fol. 1195] government bonds, stocks, and so forth. Your idea as the vice-president of this company is that your board of directors and its officials—and its finance committee—have the right to invest your funds as they see fit?

A. Within the restrictions of the New York law.

Q. Within the restrictions of the New York law?

A. Yes, sir.

Q. Now, Mr. Buswell is a vice-president of your company?

A. Yes, sir.

Q. Did you hear him testify at the Lockwood investigating committee?

A. No, sir.

Q. You have read his testimony, no doubt?

A. I didn't actually read it, because I haven't seen that book you have. I know the substance of it.

Q. Well, you have discussed it as a general policy of your company, I assume?

A. Not at all, sir; no, sir.

Q. Now, do you agree with Mr. Buswell in this statement: "Fire insurance companies have the right to do with their money as they please, provided always they maintain a complete solvency for the protection of their obligations of all kinds. If the directors authorize the company to buy and sell stocks for profit, any kind of stocks, it is my judgment that the state has nothing to do with that so long as the company remains unquestionably solvent." Is that your idea?

A. That is not diplomatically expressed, perhaps, but that is the substance of it. I would add that New York State has enacted certain legislation with respect to our investments. Those naturally would be observed by the company.

[fol. 1196] Q. Then you do agree with Mr. Buswell when he says, "I admit that our business is impressed with a public trust, and yet I still insist that we have the right to do just as we please with the assets, because the owners of those assets are liable for the amount?

Mr. Folonie: We object to that portion of the inquiry where he states "being impressed with a public trust" as calling for the legal conclusion of the witness.

Mr. Leahy: And in addition, what difference does it make if he regards that or does not? He is there now and can give his own opinion on any subject that is competent.

Mr. Folonie: Add to the objection that the form of the question, purporting to recite the testimony of some person not present, is an improper form of interrogation.

Mr. Leahy: We haven't even in our possession a copy of the document he is reading from. As a matter of fact, the report of the Lockwood committee was full of inaccuracies.

Mr. Jacobs: This witness has just got through admitting the correctness of those parts read.

Mr. Leahy: They wrote off three million dollars of the assets of this company, saying they were worthless because they didn't appear on the stock exchange, but found afterwards they were worth over three million dollars.

The Referee: Objection overruled.

[fol. 1197] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Do you agree with Mr. Buswell as to that statement?

A. Yes, sir.

Q. That is the policy of your company, I take it?

A. Being a stock company, our obligations as to our investments rest with the directors and the stockholders.

Q. Now, then, Mr. Kurth, will you please leave with the stenographer a table of salaries of your employees over five thousand dollars, together with a table of your investments and losses—your investments, including profits and losses, from the period of 1917 to 1921, inclusive?

Mr. Folonie: You went pretty fast there.

(Record read by the reporter.)

A. You want the salaries each year?

Mr. Barker:

Q. Yes, sir, from '17 to '21.
A. All right.

Mr. Folonie: We shall object to introduction of a table of salaries, on the ground it is foreign to any proper issue herein, and counsel has asked for and suggested that Mr. Tyner, who has the investments in charge, be produced as a witness. We are inclined to concur in his request and produce him if he so insists. That witness would be armed with information as to the profits and losses upon investments, and we think that counsel should indicate one alternative or the other and not ask for a useless duplication of such evidence.

Mr. Barker: This man is a vice-president of the company and I think he knows.

[fol. 1198] Mr. Folonie: Yes, but why put him to the trouble of producing tables of investments and losses if Mr. Tyner is to be produced and he will have full information on the subject; or, alternatively, if you ask for this, why not withdraw your suggestion asking us to produce that witness?

Mr. Barker: I may not want Mr. Tyner when I see them. I don't know. It will be no trouble for him to get it. If you would rather have Mr. Tyner produce those tables, I don't care.

Mr. Folonie: I don't care. I just assumed you didn't want to put any undue burden on us. If you will withdraw either suggestion, it will avoid duplication. Will this serve the purpose you wanted with Mr. Tyner, if this table is produced?

Mr. Barker: I don't know.

Mr. Folonie: I mean, presumably.

Mr. Barker: I don't know.

Mr. Folonie: Will you do this: Will you withdraw the request to produce Mr. Tyner until after this table is produced, and then call him if you find it then necessary?

Mr. Barker: Oh, I think so.

Mr. Folonie: Let the record show that the request for the appearance of Mr. Tyner is withdrawn, temporarily at least, counsel reserving the privilege of renewing it after inspection of this table if it does not produce what he wishes. Do I fairly state it, General?

Mr. Barker: Yes, I have no objection to that.

[fol. 1199] The Referee: It may be of interest to know how long it will take to prepare that table, Mr. Folonie.

Mr. Folonie: I shouldn't think it would be a very—if that assumes the present investments, so far as the investment loss is concerned——

Mr. Barker (interrupting): From '17 to '21; the years in question.

Mr. Folonie: Do you want the changes in the investments in that?

Mr. Barker: It is short. If you would prefer, I will ask what the salaries are now.

The Witness: Frankly, I don't know the salary of a single officer my rank or higher in my company.

Mr. Leahy: Well, they are not competent unless you make a showing as to what each man does to earn the salary; whether they are reasonable or unreasonable is the only question.

Mr. Barker: I will probably ask then what they do.

Mr. Leahy: I made an objection which has not been ruled on, as to the necessity of producing the salaries.

Mr. Folonie: That resolves itself into a personal equation, if the court please, as to officers who do not desire to have made public salaries received by them. Now, if that can be given as a conglomerate sum of, say, the president and a specified number of other officials, counsel may designate as to a conglomerate sum, which they can verify from the records—which we will open to their inspection—I [fol. 1200] should think it would serve counsel's purpose and it will not violate what is generally a confidence in the business. The present witness does not know the salary of the other officials in his company, because that is believed

to be proper managerial sanction, not to let any employee know what the other receives for fear of creating jealousies and antagonisms and so forth, and I will ask counsel if he will not modify his demand to permit the production of a conglomerate amount, including any group or specified number of officers that he may mention, rather than to specify the separate amounts.

Mr. Barker: That would not serve my purpose at all. I want to know the salary of the president, vice-presidents, and officials, agents of those men, and instead of calling them and asking them what their salary is I can just let it be put in. I haven't any desire to make any display of it. Probably won't look at it myself until we get ready to argue it.

Mr. Folonie: I can see where it would serve a legitimate purpose for counsel to know what the salary item of the officers in total was, but what purpose it could serve to show the salary of each, I don't think that could serve any legitimate purpose in this law suit, and I shall respectfully protest against the necessity of producing it in that way.

Mr. Barker: There is no question but what we are entitled to it, under the hearing, I assume. You are not questioning that?

[fol. 1201] Mr. Leahy: The only reason you are entitled to it is to see whether the amount allocated to Missouri is the proper amount. Now, you could learn that by taking the sum of it and seeing if the proportionate amount is applied, but to go into the secrecies of this corporation's business, he has no right to do that. The law does not contemplate they will come in here and regulate——

Mr. Folonie (interrupting): And I will supplement that by offering any counsel or representative of his the privilege of going in and inspecting the books to verify the figures, on his statement that it will not be made public.

Mr. Barker: That wouldn't avail us anything. I want in the record the salaries of the officers, with a view of determining, as a rate-making body, whether they are reasonable or unreasonable. I want to go into the question of expenses. Now, if you are raising the question that Missouri is not concerned about the expenses of the company, of course you present a legal question which we will take up with you at any time, if you want it; but so there will be no misunderstanding at this hearing and no con-

troversy, it is our intention to go into all questions of expenses of the companies, including the salaries and reasonableness or unreasonableness of them; to ascertain whether or not Missouri is probably charged with those overhead expenses. That is our purpose.

Mr. Folonie: So far as the inquiry is directed as counsel now indicates to the reasonableness or unreasonableness of the expense items in question, whether one officer is paid {fol. 1202} too much or too little in somebody's judgment is not for determination in this case. Whether the aggregate of the salaries paid is exorbitant or not exorbitant is not legally in this case either. But we are willing to waive the point, to this extent only: That we are willing to furnish a lump sum aggregate of the salaries as asked for by counsel. If that tender is not accepted, we object to any inquiry as to the salaries paid these officers as leading to a divulging of matters of personal concern which cannot possibly affect the legitimate issues in this law suit.

Mr. Leahy: And not covered by the statute of Missouri.

Mr. Folonie: Not covered by the statutory inquiry at all.

The Referee: As the matter now stands, gentlemen, I hardly see that I am in position to make any ruling at all, for this reason: It is not within my function to attempt to coerce counsel into any sort of an agreement, and pending negotiations there is no occasion for a ruling. I would be very glad indeed if counsel were able to agree, and I think I may properly say that of course the referee has no desire whatever to embarrass anybody but of necessity has to rule as best he can when the proposition comes to an acute issue.

Mr. Folonie: Permit me, in the interest of furthering counsel's purpose, without waiving my objection and outside of the record, to make a proposition to counsel:

{fol. 1203} (Whereupon discussion ensues.)

Mr. Folonie: Now, counsel having made request for the production of such an itemized list of salaries showing—such an itemized statement, with the list of salaries, showing separately the list of the salaries of each officer above a specified amount, I direct the witness that under my understanding of the law and issues herein, he is not required so to do; unless the commissioner shall otherwise direct. And I request the witness not to comply with counsel's request.

Mr. Jacobs: Now, Your Honor, in going into this matter, the question of expense and the question of whether or not there are any duplications or whether expenses have been properly allocated to the State of Missouri, those expenses that were denominated as empirical expenses by counsel for the companies, we have to have them in detail in order to have any reasonable understanding of them at all. We can't take aggregate amounts and arrive at any conclusion in going into the question of expenses at all.

The Referee: Gentlemen, it is now twenty minutes to six o'clock. It seems to me that the ruling on this particular point is one which may be of considerable importance in the future course of this hearing. I would be glad to hear from counsel more fully than the lateness of the hour will now permit, and I will defer any ruling on this until tomorrow morning at ten o'clock, and at that time will be glad to hear from counsel. We will adjourn until ten o'clock tomorrow morning.

[fol. 1204] (Whereupon an adjournment was taken until 10:00 o'clock the morning of the following day, the same being Tuesday, the 16th day of October, A. D., 1923, at which time parties reconvened at the same place and the following proceedings were had):

Wilfred Kurth, recalled for further cross-examination on behalf of the defendant, was examined and testified as follows:

Cross-examination (continued) by Mr. Barker:

Q. Mr. Kurth, one question that I forgot to ask you yesterday. In explaining the distribution of your dividends from '17 to '21 and the amount set aside for surplus, did you include all stock dividends and all dividends of all kinds during that period?

A. Yes, sir.

Q. The 25 per cent cash dividend, you mean to include, and every kind of stock dividend or bonus of any kind that was distributed during that period?

A. Yes, sir.

Q. Now, then, Mr. Kurth, your company invests, among other things, in stock in private corporations?

A. Yes, sir.

Q. Have you considered, Mr. Kurth, the amount of your earnings from your investments on stock in private corporations as compared with your earnings on your investments in real estate mortgages, to see which is the most profitable?

A. No, sir. That is a function of the financial officer and the finance committee.

Q. You don't know so much about that, except as you would hear about it?

A. That is all, although I can say this: That the state-
[fol. 1205] ments on file with the Missouri department contain, as I said before, every security we own and every security we purchase and the full details and the name of the buyer, the seller, the cost price, what we realize on them, and the amount of dividends or interest we receive on each security during the calendar year; and, in fact, I don't know of anything additional that could be supplied in that connection.

Q. I was only interested in knowing why you didn't invest more in real estate mortgages, if there is any reason why you should not?

A. Well, I couldn't answer for the company on that.

Q. Do any of the directors, officers or managers of your company, as far as you know—are they interested, as officers, managers or directors of private corporations and as such sell their securities to your company?

A. Not to my knowledge, no, sir.

Q. Now, your building here in New York, that belongs to your company?

A. Through the ownership of the Inter-zone Corporation, which owns all of our real estate; includes the two buildings, in New York, one in Brooklyn, one in Baltimore, one in Philadelphia, all occupied by the company.

Q. What is the Inter-zone Corporation?

A. That is the name of the building company which owns all of the real estate; and all of its stocks owned by the Home Insurance Company.

Q. Now, does your company pay the Inter-zone Corporation a rent for the occupancy of these buildings?

A. Yes, sir.

[fol. 1206] Q. Some of the buildings and parts of them are rented to other tenants?

A. In our home office building, two floors at the present time are rented, but with the normal growth of our business we expect it won't be long before we will require that additional space.

Q. And the upkeep and repairs for those buidings is one of your general expenses?

A. No, sir, that is the Inter-zone Corporation's, that operates the building, and the upkeep, heats, lights, and repairs them.

Q. And the rent you pay this corporation, of course, that is part of your expense?

A. That is a part of our expense. Up till this—we moved from 59 Peder—we paid rent to the Mutual Life Insurance Company, and the difference now is we pay it to the Inter-zone Corporation.

Q. Have you considered, Mr. Kurth, as a vice-president of your company the question as to whether or not a reduced rate of, say, ten per cent in this instance, would produce a greater volume of insurance so that in the end you would receive about as much for your services?

Mr. Folonie: We object to speculating on that subject as foreign to the theory of the Missouri statute, and incompetent.

Mr. Barker: I just merely asked you if you considered that.

Mr. Folonie: Answer it.

A. I haven't given it much consideration.

Mr. Barker:

Q. And only a test would develop that difference, I take it?

[fol. 1207] A. Well, our experience in other cases where rates have been reduced on classes did not indicate that there was any marked change in the volume of business developing.

Q. Are you familiar with the fact that when the transit company here reduced its fare to five cents its earnings constantly grew in New York?

A. I am aware that the transit company's income from fares increased right along. I had not been aware that they had reduced fares.

Q. You don't remember when they charged more than five cents?

A. Not in New York City, no sir.

Mr. Barker: I believe that is all.

The Referee:

Q. Mr. Kurth, referring to the Inter-zone Corporation——

A. (Interrupting.) Yes, sir.

Q. I understood you to say that certain—that the stock of that corporation was held by the Home Insurance Company?

A. Yes, sir.

Q. Directly, without the intervention of any third persons, trustees or anything of that sort?

A. Directly. It appears in its assets and is listed in the statements we file with all the departments.

Q. And such dividends, if any, as are declared by the Inter-zone Corporation are paid direct to the Home?

A. To the Home; no one connected with the Home receives a salary or fees or any emolument from the Inter-zone Corporation.

Q. The officials of that corporation are distinct?

A. They are identical, almost, with those of the Home. [fol. 1208] Mr. Folonie: You mean then that the officers of the Home act as officers of the Inter-zone but receive no compensation for their services?

A. Yes.

The Referee:

Q. No compensation from the Interzone?

A. From the Inter-zone; what we call the working officer, a detail man and trouble man of the Inter-zone Corporation receives a salary from the Inter-zone Corporation, and of course the help they employ receives wages.

Mr. Barker: Just one more question, please.

Mr. Folonie:

Q. In other words, it is the managers who are also the managers of the Home, who donate their services to that company?

A. Yes, sir.

Q. Knowing that the benefit, whatever it is, from the corporation, will come to the Home.

Mr. Barker:

Q. The earnings from the Inter-zone Corporation, if any, are turned in to the general assets of the Home company?

A. Yes, sir.

Q. And as such distributed to the stockholders?

A. Yes, sir.

Mr. Barker: That is all.

Redirect examination by Mr. Folonie:

Q. You were asked yesterday by General Barker a question—I may have my percentages wrong, but in substance, if you had a total profit of 45 and some per cent, from your operations other than your underwriting, and made a 5 per cent underwriting profit, deducted that from the other figure, whether it would not leave you the difference of about 35 per cent as indicative of your investment profit. [fol. 1209] Do you remember the question to which I refer?

A. Yes, I remember the general conversation.

Q. This morning before this hearing commenced you called my attention to the fact that there was an error in the assumption and also in your answer to that. Will you state your correction into the record?

A. The information given out based—gave certain percentages of the capital as the total earnings of the corporation; both from underwriting and from investments. In segregating that the general asked whether the underwriting profit should be construed as 5 per cent. I stated that it was not that amount, but in making his calculations he deducted the underwriting, of 5 per cent, from the total earnings on the capital stock, and produced a figure which, I appreciate now, was incorrect, for this reason: The capital stock was $6,000,000 during the period under review. The premiums were many times in excess of that. Therefore, a 5 per cent underwriting profit figured on the turnover was equivalent to more than 5 per cent on the capital.

The Referee: That is the old confusion from not distinguishing between the different bases on which the percentages are calculated.

A. Yes, sir.

Mr. Folonie:

Q. You were asked yesterday about some reciprocal company that was assumed to have paid back a large per cent, or, I think, the general even assumed, paid all of their premium receipts during a given year back to the subscribers of the reciprocal.

A. Yes, sir.

[fol. 1210] Q. Now, from your whole knowledge of the business, suppose a great conflagration resulted and a reciprocal insurance company or a mutual insurance company, doing business on their method, should find that they should not have available assets sufficient to meet that loss, how do they go at securing the necessary amount to meet such a conflagration loss?

A. From their policy holders.

Q. In other words, they assess their policy holders an amount additional to that which they previously received from them?

A. Yes.

Q. And if they had rebated something to them and found afterwards they needed it they would get it back again?

A. Yes.

Q. Now, if you find that you have a very heavy loss of an extraordinary kind, I suppose you would go to your policy holders and get some more, if you found this inadequate?

A. We have to go to our stockholders.

Q. That is the essential distinction between the two general classes of business, is it not?

A. That is one fundamental difference. There is one other point that is in the question of mutual insurance companies' dividends. I recall that there are at least two companies that pay no dividends; mutuals don't pretend to, don't advertise to. Charge, they claim, stock company rates. That is the Ohio Farmers of Leroy and the Ohio Farmers of Pennsylvania. (?)

Mr. Jacobs:

Q. You mean they don't pay dividends to the stockholders at the end of the year?

A. Or their policy holders; they have no stockholders.

Mr. Jacobs: I mean policy holders.

[fol. 1211] Mr. Folonie:

Q. In other words, they charge full stock company rates and then just keep it all?

A. Keep it all.

Q. But they have no stockholders to divide it among?

A. No, sir.

Q. So the difference, whatever they pile up, they just keep it?

A. Yes, sir.

Mr. Barker: Just like the stockholders do, as far as the policy holders is concerned?

A. Yes, but the stockholder puts up the money to back up his contract. In our case, it is about $35,000,000.

The Referee: The gist of that, then, if I gather it correctly, is that in such mutual insurance companies as you have been speaking of there are no dividends, the rates are the same as those charged by the regular stock companies?

A. Yes, sir.

The Referee: And the policy holders face the possibility, at least, of an assessment?

A. That is a question. I don't know whether they do or not, what their form of agreement is. I know this: They are mutual companies, have no paid in capital, no liability on the part of the stockholders. They charge nothing—advertise that they charge the same as the stock company rates. Now, the profits or the losses are absorbed by the organization, somehow. I don't know where a catastrophe like a conflagration in excess of the net surplus of those companies would be collected from.

[fol. 1212] Mr. Jacobs: Do those companies create out of the difference between their expenses and the premiums a surplus beyond their expenses of operation, do you know?

A. They have accumulated a surplus.

Mr. Folonie:

Q. Now, you were asked about some New York reciprocal insurers, do you know that the organization counsel asked you about writes nothing but sprinklered risks? Do you know whether it does?

A. I understood so.

Q. Where does sprinklered risks stand as to the relative freedom from heavy losses, as compared with unsprinklered risks?

A. Why, they are about 1 to 12.

Q. In other words, it is a very fine, selected risk in insurance, is it not?

A. It is.

Q. Does your company write virtually all lines of insurance transacted by fire insurance companies?

A. All lines.

Q. You were interrogated by my opponent about the effect, and he quoted some man named Best, or purported to quote him, that if the earnings on part of your invested assets, namely that part represented or offsetting the earned premiums, were to be applied in reduction of premiums by a consideration of the same in the rates, it would make a very great saving to policy holders. Now, if you took all of the profits of your company, your capital and your surplus, and retained nothing at all for your stockholders, your could reduce it still more, couldn't you?

A. Considerably more.

Mr. Jacobs: That is self evident, Your Honor. There is no evidenciary value in that matter.

[fol. 1213] Mr. Folonie:

Q. You mentioned an amount that you would set aside specially for conflagration figures, after the San Francisco fire. Was that set aside in the form of a percentage of premiums, or just a fixed amount?

A. An arbitrary amount set aside.

The Referee: Not based on the percentage basis at all, did I understand you?

A. In no respect; just an arbitrary amount.

Mr. Folonie:

Q. Well, what was the amount?

A. We began with $500,000 and gradually increased it to $2,000,000.

Mr. Jacobs: Did I understand you to say you discontinued that?

A. We merged it with the general surplus.

Mr. Jacobs: And don't carry a fund of that kind any more?

A. No; none specially earmarked as conflagration. Of course, the entire surplus is available for conflagrations.

Mr. Folonie:

Q. Has that, set aside on your books as a special fund, been discontinued, and it is now a part of the general surplus?

A. Yes.

The Referee: Was the fund ever kept as a separate fund and distinctly so earmarked?

A. No, sir.

The Referee: So the whole matter was a matter of bookkeeping entry?

A. Yes.

The Referee: Without practical effect of any sort?

[fol. 1214] A. Except some of the departments thought there might be concealed liabilities there and it resulted in a lot of correspondence, and it was not worth the bother of getting up the bookkeeping entries.

The Referee: So far as the actual operation of the insurance was concerned, that business was without any practical effect?

A. Without any effect.

Mr. Folonie:

Q. Does your company invest in speculative securities with a view to undertaking to make speculative profits?

A. Not at all, sir.

Mr. Jacobs: Your Honor, the defendant moves to strike out that answer. I didn't object to the question—because

that is a matter for this court to conclude upon the testimony of what the investments were and along what line.

The Referee: That is obviously an opinion of the witness. Overruled.

(To which action and ruling of the referee the defendants by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: Did you hear the defendant Ben C. Hyde read his paper and make his remarks at Minneapolis at the 54th Annual Session of the National Convention of Insurance Commissioners about August 22nd?

A. Yes, sir.

Mr. Jacobs: Make a good speech?

A. Created some commotion.

Mr. Folonie:

Q. Did he, in the course of his reading of his paper and [fol. 1215] making of his remarks there respecting conflagration hazard, state in substance: "Respecting conflagration hazard in rate making, unquestionably this hazard should be considered?"

A. He did.

[fol. 1216] Mr. Folonie:

Q. Will you turn to pages 4 and 5 of your annual statement blank you had here for any given year, Mr. Kurth?

[fol. 1217] Mr. Jacobs: What year?

Mr. Folonie: The one he has here is 1921.

Q. So far as the printed pages are concerned, for all these years, '17 to '21, are these sheets substantially the same?

A. Identical.

Q. Referring you now to pages 4 and 5 of your annual statement blank as furnished you by the State of Missouri and filed in and returned by your company to that state, there has been interrogation as to whether the unearned premium figure is an asset or a liability and whether aside from being a liability, whether it is not also on the asset side; and I wish you would explain the situation by reference to these papers, which I may offer in evidence, if your explanation does not cover it.

A. On page 5, Item 5, liabilities, line 19 reads, "Total unearned premiums as computed above, $34,250,780." This is the sum of lines 16, 17 and 18. 16 reads: "Gross premium (less reinsurance) received and receivable upon all unexpired fire risks effective on and after January 1, 1921, $32,455,091.00; unearned premiums thereon, per recapitulation, page 7, Item 16, column 6 $20,062,195.00. Line 17, "Gross premiums (less reinsurance) received and receivable upon all unexpired risks, other than fire risks, effective on and after January 1, 1921, $6,091,615.00; unearned premiums thereon, per recapitulation, page 7, Item 31, column 7, $3,607,942.00. Line 18, "Gross premiums (less reinsurance) received and receivable upon all unexpired risks effective prior to January 1, 1921, $28,066,138.00; unearned premiums thereon per recapitulation, page 7, Item [fol. 1218] 51, column 6, $10,580,643.00." Making the total, as stated in line 19, $34,250,780.00.

Q. I will ask you a few questions to bring it out, perhaps, in a more concrete way: What is the caption of your liability page or of this page 5?

A. "Annual Statement of The Home Insurance Company."

Q. And then what is immediately beneath that?

A. "V—Liabilities."

Q. Under that caption as liabilities—that is in caps, heavy type, is it not?

A. Yes, sir.

Q. Now, beneath that you have a group from 1 to 14 which are there totalled, have you not?

A. Yes, sir.

Q. What is that group, 1 to 14?

A. First item is "Losses and Claims," subdivided into, "Fire, Ocean marine, Motor vehicles, Aircraft, Inland navigation," and various classes.

Q. In other words, these first 14 are the total of losses and claims?

A. Yes, sir.

Q. Then 15 to 19 cover what?

A. 15 is a separate item. 16 to 19 inclusive are the liabilities represented by the unearned premiums.

Q. What is Item 26—I am taking the item where you have a figure carried out?

A. It is the item of liabilities consisting of salaries, rents, expenses, bills, accounts, fees, etc., due or accrued.

Q. And what is line 27?

A. Liabilities; estimated amount hereafter payable for Federal, state and other taxes based upon the business of the year of this statement.

[fol. 1219] Q. What is line 29?

A. Funds held under reinsurance treaties, and we have interlined, "Unpaid Reinsurance Premiums."

Q. Then you have entered these items opposite which an amount appears, you have then a "total amount of all liabilities except capital," have you not?

A. Yes, sir.

Q. As line 34?

A. Yes, sir.

Q. Then line 35 is what liability?

A. "Capital paid up."

Q. And line 36 is what?

A. "Surplus over all liabilities."

Q. And line 37?

A. "Surplus as regards policy-holders."

Q. And what is line 38?

A. 38 is the aggregate of all the items on the page.

Q. That is the total of all liabilities. Now, to go over to page 4, what is the heavy type caption on page 4?

A. "IV.—Ledger Assets."

Q. Now, those "ledger assets," take line 4—these are all numbered, if the court please, and I am referring to the numbers of the lines. Take line 4, the first line opposite which you have any amount stated.

A. "Book Value of Bonds, $46,130,733.01."

Q. Never mind the amount.

A (continuing) "and stocks."

Q. Value of bonds and stocks. What is line 7?

A. "Deposits in trust companies and banks on interest, per Schedule N."

[fol. 1220] Q. And line 8?

A. "Agents' balances representing business written subsequent to October 1, 1921."

Q. And line 9?

A. "(b) Agents' balances representing business written prior to October 1, 1921."

Q. And what is line 10?

A. "Bills receivable, taken for fire risks."

Q. The total of this group of items which you have so far read has what description?

A. Line 16, "Total ledger assets, as per balance on page 3."

Q. That refers to another page, where it is detailed in more elaboration, does it not?

A. Page 3 represents the difference between the income plus last year's ledger assets less the expenditures which would represent the amount of ledger assets the company has in its possession at the end of the calendar year.

The Referee: Will you read that last question and answer, please Mr. Blume?

(Question and answer read by the reporter.)

Mr. Folonie: The next group on this page of ledger assets, page 4, what is the caption of the next group?

A. "Non ledger Assets."

Q. What is line 18, under that caption?

A. "Interest due and accrued, $694,866, on bonds per Schedule D, Part 1."

Q. Line 26?

A. "Market value (not including interest in Item 18) of bonds and stocks over book value per Schedule D."

Q. Line 28?

A. Inserted, "Recoverable for reinsurance on paid losses."

[fol. 1221] Q. And then you have combined that, a summing up of ledger and non ledger assets, and what is the language there contained?

A. "Gross Assets."

Q. And below that you have what caption?

A. "Deduct Assets not Admitted."

Q. That takes in a new group, now, does it?

A. Yes, sir.

Q. Line 34 under that?

A. "Agents' balances representing business written prior to October 1, 1921."

Q. 35?

A. "Bills receivable, past due, taken for premiums."

Q. Then there is a summing up at the bottom, entitled what?

A. "Total Admitted Assets."

Q. Now, having read this entire page of assets, is there any item of importance, either paid or unpaid premiums, in your assets statement——

A. Paid or unpaid, did you say?

Q. Any other premiums paid or unpaid, inserted there as assets?

A. Except as represented by agents' balances.

Mr. Folonie: That is all.

Recross-examination by Mr. Barker:

Q. Mr. Kurth, referring to this same page 5 of your annual statement for 1921: You show among other things that you write ocean marine insurance?

A. Yes, sir.

Q. Then you write aircraft insurance?

A. Yes, sir.

Q. And that you write automobile insurance?

A. Yes, sir.

[fol. 1222] Q. Now, the expenses of writing aircraft insurance and automobile collision insurance and ocean marine insurance is all included in your general expense account?

A. Yes, sir; so are the premiums.

Q. So that in apportioning your expenses to the different states, including Missouri, and your losses, likewise, they apportioned to Missouri on the business which I have named?

A. Yes, sir; also the premiums.

Q. So that Missouri pays its proportionate part of the expense of your automobile collision insurance, for instance?

A. Such as is conducted in Missouri.

Q. Yes, sir. And also for your aircraft insurance of the United States?

A. If there is any conducted in Missouri the expense would be prorated to Missouri; otherwise not.

Q. That is, you recognize that collision insurance is a much greater hazard than fire insurance, to automobiles?

A. And the premiums are correspondingly higher.

Q. Yes, sir; and your loss ratio is of course much more intense?

A. I would not say that. I am not able to offhand give you the separate loss ratios for fire insurance on automobiles and collision insurance on automobiles compared with the premiums for the respective hazards.

Q. I think perhaps you didn't understand me. I mean your experience teaches you that a great many more collisions between automobiles and—that there are a great many more collisions between automobiles than there are burning up of automobiles?

A. Quite true.

[fol. 1223] Q. And therefore the premium is higher?

A. Considerably higher.

Q. The loss ratio of course on automobile collision is very high?

A. I can't say as to that. I would be very glad to get some figures for you comparing the fire losses, fire loss ratio and the collision loss ratio, in comparison with the premiums for the respective hazards.

Q. You may care to do that; you may do that if you care to. I thought possibly we could agree.

A. I will agree that the collision losses are much more frequent than fire losses.

Q. Yes. I thought so.

Mr. Polonie: On automobiles?

A. Yes.

The Referee: Mr. Kurth, why is the statement that you have before you, which has largely been read into the record, prepared in the form in which it there appears?

A. The various states supply us with blanks which we must fill out annually. The national convention of insurance commissioners in order to for any reason they see fit, agreed upon what they called the uniform form of annual statement, and all of the states now supply these blanks to the companies, which they in turn fill out and file annually.

The Referee: and it is for that reason unearned premiums appear there as a liability?

A. That is correct.

The Referee: Now, irrespective of any bookkeeping effort or conventional form of report or statement, I wish [fol. 1224] to know whether or not I am correct in this: In point of fact, the unearned premiums are in possession of the company?

A. They are, or are collectable.

The Referee: Yes. The assets of the company are subject to all claims against the company, including the fund arising from unearned premiums?

A. Yes, sir.

The Referee: The difference being, as I understand, that fire losses have priority as against claims for cancellation?

A. Yes, sir.

The Referee: Then is the result this: That while the unearned premiums are usually in the conventional statement as a liability, that the unearned premiums are in the possession of the company as an asset, which may be used for payment of the debts of the company?

A. They are in possession of the company, or the company must supply them from its own funds.

The Referee: Yes. Well, except insofar as the unearned premium fund may have been depleted by cancellations, or where the unearned premium is retained as a part of the settlement with the insured who has sustained a loss, except in instances where there may not have been a collection of a given premium for a given time, the fund actually is in the hands of the company, is it not?

A. It must be.

The Referee: Certainly; and is invested in whatever form the company sees fit to invest it?

[fol. 1225] A. In such funds as they must have to remain liquid.

The Referee: Then the securities in which they have funds invested and the cash remaining of that fund not invested in securities forms assets of the company?

A. It must, yes, sir, in part.

Mr. Folonie: As I understand you, the so-called unearned premium reserve is derived about two-thirds out of premiums and about one-third out of surplus?

A. That is correct.

Mr. Folonie: So that, in other words, about two-thirds of that figure which you set up as a liability there is offset by moneys in fact secured from current policy holders which your company has the possession of?

A. Yes, sir.

Mr. Folonie: Does that assist in clarifying it?

The Referee: Yes.

(Witness excused.)

JOSEPH FROGGATT, produced as a witness on behalf of the plaintiffs, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. Joseph Froggatt.

Q. And where do you live, Mr. Froggatt, please?

A. East Orange, New Jersey.

Q. Where do you have the headquarters of your business?

A. 25 Church Street, New York City.

[fol. 1226] Q. And what is your business?

A. Insurance accountant.

Q. And in connection with that business, please state your experience both as to the length of time you have been engaged in such business and the character and nature of the work you have done while in it.

A. I have been engaged in the public accounting business for a little over ten years. Prior to that time I was engaged in the fire insurance business.

I have during the last ten years made various examinations for insurance departments, and also made special examinations on behalf of the various companies and have a number of companies on my books as regular clients for periodic audits.

Q. When you say you have made examinations for insurance departments, what do you mean by examination of companies?

A. In states such as Massachusetts—other companies where their examiners were too busy to take up the examination of a company or where a company was a very large and important one, they wanted a special staff there, they invited me to come in and make the examination for that state.

Q. Well, what does an examination consist of? Do you go and look at the company's office and see what it looks like—assume we don't know anything about the business.

A. A detailed examination of the company's assets and liabilities, to prove its financial standing, at a given period.

Q. And that has relation to the solvency of the company and the nature and character of its assets and the nature [fol. 1227] and character of its liabilities?

A. Absolutely, going into detail in all particulars, both as to assets and liabilities.

Q. What fire insurance company were you connected with?

A. The Atlas Assurance Company.

Q. What was the nature of your connection with them?

A. I was actuary of it.

Q. And was that company at the time you were connected with it engaged in the fire insurance business and allied lines?

A. Engaged in the fire insurance business.

Q. And how long were you connected with that company?

A. About seven years, I think.

Q. Now, has your work as an accountant since you have been engaged in that line of business had special relation to insurance accountancy?

A. All of the work is insurance accountancy work.

Q. In other words, you mean you limit yourself quite strictly to that line?

A. Yes.

Q. And how many assistants and associates and employes have you in your organization?

A. Upwards of 100.

Q. Now, in the course of your experience, both with fire insurance companies and as an accountant, examining affairs of fire insurance companies, have you become familiar with the method of transaction of the business of the different companies and the insurance departments of the various states with whom they have dealings?

A. Yes.

[fol. 1228] Q. And have you become familiar with the methods by which profits and losses and earnings are properly to be calculated in that line of business?

A. I have.

Q. In the calculation of the insurance activity of a fire insurance company, what is in your judgment and experience the proper method for the calculation of the profits or the losses which the company has sustained upon its activities or conduct during the insurance business?

A. Do you refer now to the—there are two sections of profits; there is the profit derived from the underwriting and a profit derived from the investment part of the business.

Q. What do you mean by underwriting?

A. The underwriting of the business, that is the taking in of the premiums, against which are charged, when those premiums are earned—against such earned premiums are charged losses incurred, expenses incurred, and the remainder constitutes an underwriting profit.

Q. Is that method universally recognized in the business of insurance and insurance accountancy as the proper method of determining whether the business of indemnifying owners of property against losses in casualties to be the correct and accurate method of determining whether a profit or a loss has been sustained in that activity?

A. Yes, sir.

Q. Is the activity of companies in the underwriting and their activity in the investments the same activity, or are they separate and distinct activities, as the business is conducted?

A. They are distinct; always looked upon as being distinct.

[fol. 1229] Q. And what is the investment part of the business of the companies, its general nature?

A. The investment part of the business of the companies constitutes the investment of the money and bonds, stocks, mortgages and real estate or any other investment the company might desire to invest its funds in. Usually conducted by a finance committee of the company.

Q. What do you say as to the propriety of the method of calculating underwriting profits or reducing it to so-called simplicity by simply taking the account of the amount of money you take in and the amount of money you pay out and what you have left is the profit in the business.

A. Well, one part of the business is considered to be underwriting and the other part of the business is considered to be investment.

Q. I am talking about the underwriting activity. Why, in arriving at an underwriting profit, why trouble with earned premiums and incurred losses and expenses? why not just figure how much premiums you took in and how much you paid out for losses and expenses and figure the balance as your underwriting profit?

A. Because you can't figure on a profit that is not earned, the premiums that you take in would not represent premiums that were earned.

Q. You might be called upon tomorrow—if every policyholder came into the company's offices and canceled their policy, you might have to pay out all that unearned premium. That is what it is there for.

The Referee: Does that ever occur?

[fol. 1230] A. I don't know that it ever did, but if it did—if a demand was made upon the company, the unearned portion of the premium is payable to the assured. Therefore you cannot call that earned profit at all.

Mr. Folonie:

Q. In other words, it is a rare thing that all the policyholders get so scared they want their money back at the same time?

A. I haven't known of such an instance, but still, that is the theory of the thing.

Q. Now, if a company should make—you say you have made examinations of companies on behalf of state insurance departments?

A. Yes, I have made several.

Q. Now, in behalf of a state insurance company, if a statement were made not on the earned basis at all but on the basis of the premiums written, losses paid and expenses paid, would that in your judgment, if you were representing the state insurance department, would that properly reflect or indicate the solvency of the particular company who made such a return?

A. How is that question?

Mr. Folonie: Read it.

(Question read by the reporter.)

A. No, sir.

Mr. Folonie:

Q. Why not?

A. Because it would not have set up, any such statement, would not have set up in such a statement its liability for unearned premiums or unpaid losses or any other liabilities.

Q. Suppose a company were in the position where a very slight matter would throw it over the line into insolvency, [fol. 1231] and that that company should, in December of

a given year, continue to take in premiums and pay no losses at all, but defer them all until after the first of the year, and then adopted the paid basis instead of the incurred basis of making a statement; would there be any method of checking or knowing of those liabilities, on that kind of a statement?

A. Oh, yes; an examination will be made of the loss files of the company and all losses which were unpaid would be tabulated and set up as a liability.

Q. In other words, if they didn't set it up themselves you as representing the department would set it up for them?

A. Oh, yes.

The Referee: The system is designed, then, as I understand you, to take into consideration in a going concern the amount of assets on hand and the amount of actual or contingent liabilities and in that way to arrive at a reasonably accurate approximation of the solvency or insolvency of the concern?

A. That is right, sir.

The Referee: Now, doesn't that same condition arise and that same necessity exist in any other going concern, no matter what line of business it may be engaged in—practically?

A. Yes.

The Referee: Yes.

Mr. Folonie:

Q. Now, in the case of a mercantile concern—to get away from insurance for a few minutes from insurance altogether—in the case of a mercantile concern which has [fol. 1232] bought a great many goods, they are—which are in its inventory, for which it has not paid, on the taking of a physical inventory which would be a part of its statement of assets and liabilities, those goods would appear in the inventory, would they not?

A. Yes, they would.

Q. Now, in order to arrive at a true understanding of the condition of affairs, how would, in such a case—how would the amount of the unpaid bills which had for those

goods which were so shown in the inventory—how would they be set up on a mercantile company's books?

A. Bills payable.

Q. And therefore whatever accretions there were to inventory would offset by bills payable?

A. That is right.

Q. And is there a rough analogy between the insurance business and the mercantile concerns in that respect, so far as the incurred basis is concerned?

A. Just the same.

Q. And does the unearned premium in a sense enter into the inventory of a mercantile concern—does it bear some analogy to that?

A. It represents the premiums which have been taken in on one side and the unearned portion of such premiums set up on the other side, as being owing to the assured.

Q. In other words, if you have counted the goods in your inventory and then you have to set up a book figure so you don't deceive yourself in thinking you really own all those assets.

A. Yes, that is it.

[fol. 1233] Q. While I know that the analogy is not real close, does the general principle apply in both cases?

A. I think it does.

Q. Why instead of computing underwriting profits upon volume, why wouldn't it be a logical thing to take the capital of the insurance company and allocate and pro rate it to the various states in the proportion, say, of the premiums written in the respective states; if, for instances, 1.50 of the premium income of a company was in the state of Missouri, to take 1.50 of that company's capital and say that is the Missouri capital, compute a reasonable rate of return on that amount of capital and make your premium charges, based on the theory that that is the capital in that particular jurisdiction?

A. I don't see how that could be done.

Q. Why not?

A. It would be very hard to allocate the capital and surplus of a company to any particular state.

Q. Well, a mere fact it is hard is not necessarily an objection that is good. Why isn't that the right way to do it?

A. Your question now is, why shouldn't we arrive at underwriting profits or the profits of a company on the basis of capital and surplus allocated to some particular state?

Q. Yes.

A. Because it would not be proper; you couldn't arrive at underwriting profit on such a basis.

Q. Well, your mere assertion of that may not carry much weight with the commissioner. Elaborate, please.

A. Underwriting profit is ascertained on the basis of [fol. 1234] your company as I have described. The premiums earned in that particular state, less losses and expenses incurred.

Q. How much of the capital of a company is responsible to policy holders in the State of Missouri in case of losses there—what part of the capital is answerable to losses in Missouri?

A. If a conflagration occurred in Missouri which wiped out the entire surplus of the company all of its capital would have to go to meet that loss—if that much was necessary.

Q. What is done with the capital of a fire insurance company? How is it used in the business?

A. Becomes part of the general assets.

Q. Well, what is done with it? Do you buy property with it, or what?

A. You might buy real estate or invest it in securities, as prescribed by the various insurance laws.

Q. How do you employ your capital, if at all, in the underwriting part of your business?

A. Don't employ it specially in that any more than the general conduct of the business.

Q. What moneys of the corporation—of an insurance corporation—makes up its working fund?

A. The capital and surplus.

Q. And explain if a company undertakes to do business, say in the State of Missouri, and writes premiums, say a new company starting in business, where does it derive the money, for example, to put up its unearned premium fund—where does it come from?

[fol. 1235] A. Comes from the premiums written, in the first place, and then from the surplus of the company if the premiums written are not sufficient to cover that.

Q. From your observation and experience of the unearned premium fund, or liability which is set up in the statements of the company, have you any judgment of what part of that in the conduct of the business in general comes out of premiums and what part of it comes out of surplus? In other words, what part of it——

A. (Interrupting.) I could better describe it by answering in this way: That if a new company wrote $100,000,000 worth of business in the first year, it would have to set aside to—about sixty per cent of the premiums written as unearned premiums.

Q. Where would they get that sixty per cent?

A. They would get that sixty per cent from the premiums as far as they would go, and the balance out of the surplus.

Q. Well, that is what I am trying to find out; is how far, in your experience, those premiums do go.

A. Well, a new company starting out in business, its expenses would be higher the first year; might run fifty per cent.

Q. Fifty per cent of what?

A. Fifty per cent of the premiums written.

Q. Yes?

A. So that there would be only fifty per cent of the premiums in hand to provide an offset for this reserve. The balance would have to come out of surplus account.

[fol. 1236] Q. And what about losses, where would the funds come from for that?

A. They would have to come out of that same premium and surplus; so that if you combined the average expenses, say forty-five per cent, to be conservative, for the first year, and a thirty per cent loss ratio for the first year, you would have 75 per cent to take care of the premiums and losses. You then had to take care of 60 per cent reserve, so that you have 135 per cent to take of; the 35 per cent, of course, would have to come out of the surplus.

The Referee: Permit me right here, Mr. Folonie——

Mr. Folonie: Yes.

The Referee (continuing): I take it it is not a difficult matter to determine whether or not the business of a given company in a given state for a given period of time has been profitable or unprofitable?

A. No, sir.

The Referee: You could ascertain whether or not, for example, in the State of Missouri, the business of a given company for the year 1921 yielded a specific definite sum of profits?

A. Yes, sir.

The Referee: If a, say fifteen per cent dividend were declared on the stock of that company that year there would be no great difficulty about determining what proportion of the dividend the earnings from the State of Missouri paid, would there?

Mr. Folonie: If any.

The Referee: If any.

[fol. 1237] A. No.; might answer that that it would be easily determined as to how much the profits from Missouri contributed to the general profits of the company.

The Referee: That would not necessarily involve a limitation of liability on the part of the company to any sum less than its entire assets, in the event of a conflagration in the State of Missouri?

The Witness: Will you read that, Mr. Reporter?

(Question read by the reporter.)

A. No, sir.

Mr. Folonie:

Q. Does the computation of the profits that a company makes in a given state, say Missouri, out of its business of writing policies and delivering them to policy holders and indemnifying them in a given state, have any relation in your judgment properly to the income derived from the invested assets of the company?

A. I will have to have that question again, please.

(Question read by the reporter.)

A. No.

Q. Do you recognize, or do I properly use the following terms—because if I do I want to employ them in another question: Do they have a meaning to you? Underwriting profit, investment profit, and corporate profit?

A. Underwriting profit and investment profit would have a meaning to me.

Q. Now, as I use the term "corporate profit," I judge from your answer that you don't understand just what I contemplated there?

A. No, I do not.

Q. By "corporate profit," I mean that profit which the corporation has from all of the activities of its business [fol. 1238] after discharging all its liabilities, being the net amount remaining for retention or division among stockholders, at the company's option.

A. Yes. I understand now what you mean.

Q. Now, in the estimate or determination of an underwriting profit, as calculated in the business and by you, upon what do you calculate underwriting profit?

A. Premiums earned.

Q. Upon what do you calculate investment profit?

A. On the investments of the company.

Q. Upon their book value or market value, or what?

A. On the book value.

Q. And on what do you calculate the proportion of corporate profits?

A. On the combination of both.

Q. And upon what figure would you calculate the corporate profits for the purpose of dividing the profits, if any, among stockholders?

A. Take——

Q. (Interrupting.) And upon what figure would you calculate it?

A. The combination of the—the entire profits of the company, from whatever source.

Q. Well, that is what you decide, but on what would you calculate if you were going to give a percentage to the stockholders, upon what would you calculate that? Percentage of what, of the premiums or of the investments or the capital stock?

A. Capital stock.

Q. Now, if a new company should start in business with $200,000 capital, $200,000 surplus, and write $1,000,000 of premiums, distributed so far as term is concerned, in the proportion in which the business in general exists, during [fol. 1239] the first year of its business about how would its statement look as to how much surplus they would show at the end of that year?

A. I would have to figure that out, I think, a little. In the first place, they would have to set aside a reserve of sixty per cent; that is, $600,000. They would have to pay a loss of an average of 30 per cent. They would have expenses for the first year of about 45 per cent. They start in with $200,000 of surplus, $200,000 of capital——

Q. (Interrupting.) I am assuming they write a million dollars worth of business.

A. (continuing)—and they take in $1,000,000. They start in with $400,000 derived from capital and surplus. They take in $1,000,000 as premiums. That gives them $1,400,000 altogether the first year. They had to set aside $1,350,000, representing expenses, losses and reserve, so that they would have left——

Mr. Barker (interrupting): How much? A million and what?

A. $1,350,000. That is $600,000 unearned premium reserve, a loss expense of 30 per cent, and an expense on the million dollars of 45 per cent.

The Referee: Is that 30 per cent loss a normal annual result?

A. No, sir, that is only on the first year's experience of the company. We are speaking of a new company starting in business.

The Referee: Why is the loss greater the first year than later years?

A. It is much smaller—30 per cent. The average is higher than that, running anywhere from 50 to 60 per cent.

[fol. 1240] Mr. Folonie:

Q. Why would the losses be lower the first year than later years?

A. Because writing business, just starting in, they don't have the experience of their policies, for instance. They write three and five year policies, and they don't get the experience on those policies until that circle runs around. They only get the experience upon an average of six months' policies.

Q. In other words, the average time those policies is in force is only six months instead of a year?

A. That is it. And then of course, the accumulation has not begun to get into the game yet, of three and five years.

Q. And of course, as you have made that there, you have a reserve of $600,000 and that is put up in dollars?

A. Yes.

Q. You have how much in losses?

A. Losses, $300,000.

Q. Expense how much?

A. $450,000.

Q. That makes a total of $1,350,000?

A. Or we have exhausted in reserve and expenses and losses $350,000 over the million that we took in for premiums.

Q. Now, you only had $200,000 of surplus to start with, and how much is your capital impaired?

A. Your surplus is wiped out and your capital is impaired $50,000—let's see—$350,000—$150,000.

Q. In other words, you are insolvent to the extent of $150,000 and if you didn't find some way out of your difficulty you would not be permitted to continue business?

A. That is right.

[fol. 1241] Q. How do you calculate the amount of an unearned premium?

A. The method is prescribed by the various insurance departments, as described by them, as given in the annual statement blank per cent on annual policies and so forth—certain percentages for two, three, four and five year policies, varying in percentages.

Q. And if you desire to calculate the amount of your earned premium for a given period, say a year, how do you proceed to calculate that earned premium, knowing the amount of insurance you have written, the amount of your unearned premium reserve at the beginning and at the end of the year, how would you compute your earned premium?

A. Well, you take your rule of—the thumb method is to take the premiums written and then take the unearned premium at the end of the year and the unearned premium at the beginning of the year. Of course, the technical and correct method would be to figure out the unearned portion of each policy, by the number of days it has still to run.

Q. And that would get it down to mathematical certainty, down to the very finest point?

A. Yes. The insurance departments prescribe this easier method as being a general average method.

Q. Then I suppose if you figured that down to the days you still would have a theoretical element of error because you had not figured it down to the hours?

A. Yes.

Q. Or down to minutes after that.

A. Yes. But still, it is always accepted as being close enough.

[fol. 1242] Q. What is your experience as to whether this method prescribed in these forms, by taking the amount of writings, taking into account the unearned figure at the beginning and end of the year, and making the calculation in that method, is a reasonable and accurate method of calculation?

A. It is a reasonably accurate method, with that exception of isolated cases where companies may have for some reason or other have written a larger proportion of business in the last half of the year in which their unearned premium, under this method, would not be sufficient.

The Referee: Does the experince of fire insurance companies furnish any reasonably correct basis for determining the amount of unearned premiums which will ripen into earned premiums—a certain percentage? Suppose for example, that I may make my meaning clearer, perhaps, there are $500,000 outstanding unearned premiums; now, is there any rule or any method of judging what amount of that $500,000 will ripen into earned premiums within a given period of time, say one year?

A. Yes, sir; yes, sir. The method is this: That each policy is taken and tabulated as to the date of commencement and the date of expiration; both the month and year. By these tabulations accumulated on their reserve records they can indicate to you the unearned premiums running off each month, leaving the proportion—the earned premiums running off each month, leaving the unearned premium at any given month. For instance, you see by knowing exactly when the policies expire they can ascertain [fol. 1243] the total earned premiums at the end of the month and the remainder are unearned——

The Referee: Well, now, on an average, with an ordinarily efficiently managed company, what proportion of the unearned premiums existing on the 1st day of January, 1923, would become earned premiums during that year—can you determine that with approximate accuracy?

A. Yes. From the records of the company; yes, sir.

The Referee: Well, now, how does that method of reckoning compare as to accuracy with the other two methods which you have been discussing?

A. That method is the basis for providing the figures for the calculations as prescribed by the departments; because through that method they arrive at the total business in force, on which the calculations are made; but these calculations are made on a yearly basis, while the method I described will allow for the calculation on a monthly basis, if you so desire to make it. You asked me the question as to whether you could ascertain what would be the earned premiums in the month of January. You can tell them for January, February, March, April, May and throughout the year, under this detail method; but the commissioners only call for the information on a yearly basis.

Mr. Folonie:

Q. And if you made this calculation month by month, as you mention, when you got to the end of the year would that figure at the end of the year be approximately the same as by the method prescribed in the blank?

[fol. 1244] A. It would, with the exception, as I just previously mentioned, where there would be some abnormal writings or business in the latter part of the year—which would throw out the average.

Q. In other words, assuming that the company——

A. (Interrupting.) Generally speaking, the method is correct.

Q. In other words, assuming that the proportion of term business, the first half of the year and the last half of the year, is the same, the method is unobjectionable?

A. Yes. The term and annual is the same.

Q. And if in the last half of the year you wrote a great many more five year policies than you did in the first half, then you would have the element of error that you mentioned?

A. If you wrote a good many policies, whether one, three or five years, in the latter part of the year, more than you wrote in the first half of the year, then you would have this.

The Referee: One other question, now. Suppose a given company today has on its books $500,000 unearned premiums. Suppose you were making an examination of that company's affairs, for the purpose of enabling another company to buy its entire business. Is there any method by which you could determine the present value of this $500,000 of unearned premiums?

A. Yes, sir.

The Referee: Not a difficult method, I take it?

A. No. It is a detailed method, but easily done. You simply tabulate every policy in force and work out the unearned portion, actually, by days.

[fol. 1245] The Referee: We will take a recess of ten minutes now.

(Which was accordingly done.)

The Referee: Proceed now, Mr. Folonie.

Mr. Folonie:

Q. You have mentioned—we have had mentioned several times in this case the term, used by Mr. Best, "Hidden profits in the unearned premium reserve." Are you familiar with that expression as it has been used by some people?

A. Yes. I have heard that it was used.

Q. Now, I wish you would explain the makeup of the unearned premium reserve with a view to clarifying the subject of whether there is some kind of a concealed or hidden profit in the unearned premium reserve, and explain it to us a little.

A. The socalled hidden profit represents the commission paid in advance by the companies to agents for that portion of the premium which is unearned. There isn't any hidden profit, however, as the total unearned premiums might have to be paid out to the assured. The unearned premium is set aside because it is a liability to the assured, and if the assureds should call for that unearned premium they would pay out every cent of that liability.

Q. In other words, if you are required to pay back the money to the assured in the way of a return premium, you would not be entitled to give the amount less the commission you paid your agent?

A. No. You are legally liable for the actual unearned portion of the premium.

[fol. 1246] Q. Now, what do you think of the propriety, as an accountant, of allocating to the unearned reserve as a deferred expense a part of the commission charge or acquisition cost of the business which had already been paid to or deducted out by the agent on acquiring the business?

A. Shouldn't do that, because you have already allowed it to the agent. It has gone out of your funds.

Q. Is, from the standpoint of accountancy, is it a proper method in your judgment to treat as an asset that which has in fact been paid out of your funds?

A. No, sir, you can't do it.

The Referee: Can you tell me, Mr. Froggatt, what per cent of unearned premiums was normally collected—are normally retained by the company?

A. Do I understand you to mean by that question what per cent actually are earned of the total unearned premiums set up as a liability?

The Referee: Yes.

A. Well, that is a rather hard question to answer. Of course, they are all earned, eventually.

The Referee: No, they are not. If I understand you correctly, because some of them are returned to the policy holders.

A. Except, of course, that; those that are cancelled.

The Referee: That is what I wanted to get.

A. I don't know what the percentage of cancellations would be; they would vary on various companies, or in various companies.

[fol. 1247] The Referee: Does the experience of the companies over a long term of years over which the companies have been operating give you some rule by which you can approximately estimate?

A. Yes.

The Referee: What is that percentage?

A. If the company by which they are secured were used to calculate, from 20 to 25 per cent.

The Referee: Such being the normal cancellations?
A. Being the normal cancellations.

Mr. Folonie:

Q. 20 or 25 per cent of what?
A. Of the premiums written.
Q. Of what?
A. Premiums written.
Q. That is a different proportion, then, of the reserve figure. Now, we are back to the same trouble. Percentage only means something when you know what you are figuring the percentage on. What percentage would that be, if you can calculate it, on the unearned premium figure? What percentage of the whole premiums written goes into reserve?

A. That varies, also, dependent on the company—whether it writes a larger proportion of three or five year business, as against another company writing a proportion of one year business. The average company writing an average business, three to five years, writing average business, will carry a reserve to premiums written of 80 to 85 per cent; but some companies, writing a very large proportion of term business as against this, their reserves will in some instances run over 100 per cent.

[fol. 1248] The Referee: That is not quite what I want to get at. Take some company, such for example as the Home, one of whose officers has testified in this hearing—I suppose you are in a general way familiar with the Home Company?

A. Oh, yes.

The Referee: Now, then, assume that on a given date that company has $1,000,000 of unearned premiums standing on its books, and the fund to that extent in its possession; now, what percentage of that fund normally would be refunded to the policyholders upon a cancellation of the policy?

A. It would be a very approximate idea that I could give you on that.

The Referee: Well, now, what I am trying to get in mind is whether or not the experience of insurance companies over a long period of years, during which they have been engaged in this business, has not furnished them with some

reasonably accurate rule of estimating, just as the life insurance companies have their tables of life expectancy?

A. The detail reserve figures, the system which I explained a little time ago, would give this information that you ask for.

The Referee: Now, if you were estimating the value of the business of a company, of a going fire stock company, and you saw from its books that it had then on hand $500,000 cash, arising from unearned premiums, is there any rule or method by which you could fix the value of that $500,000, taking into consideration the amount which probably nor- [fol. 1249] mally would be refunded to policyholders by reason of cancellations or otherwise?

A. You would simply have to consider the entire amount of the liability in fixing that value, because on the other side, of course, you would have it in your funds, what remained of it after paying out expenses to acquire it.

The Referee: I understand that perfectly, but this I do not understand: Here you have $500,000—in the unearned premium fund. Now, suppose you were valuing that company's assets, striving to fix a correct valuation of all of its assets, you would include that $500,000 in your valuation, wouldn't you?

A. You wouldn't have $500,000 of cash representing the unearned premium fund.

The Referee: Well, I am assuming that you did have.

A. Well, but you can't have.

The Referee: Why not?

A. Because the unearned premium is calculated on the gross premium. It is a proportion of the gross premium; you have already paid out—the commission out of that gross premium—to the agent.

The Referee: Yes. Now, then, suppose with all that you have on hand $500,000 cash—on hand in the hands of the company.

A. All right.

The Referee: Now, then, from the experience of the companies can you calculate with any decree of certainty at all what proportion of that residuary, that $500,000, will probably, in the ordinary course of business, be refunded to policyholders?

[fol. 1250] A. Yes. You can tell that from this detail record of what the average cancellations have been over a series of years.

The Referee: All right. Now, what would the average be?

A. I couldn't say, sir.

The Referee: Is there not a means of determining that fact?

A. Yes, there is; by the examination of the detailed records of the company's unearned premium reserve.

The Referee: But you don't know whether that might run 10 per cent or 90 per cent?

A. I don't know what it would run, no, sir. I wouldn't like to state here. I am afraid I might make a mistake in my guess. It would be merely a guess.

Mr. Folonie:

Q. Does the proportion which cancellations bear to writings, which you said, I think, was 20 to 25 per cent, namely the amount of refunds out of the amounts written, is that in any case any indication of the proportion of the unearned premium which would be returned to policyholders?

A. Well, it would be relatively the same proportion; that is, it would take, if you had premiums written in your percentages so and so, why, the premiums in force represent a certain unearned portion of those—the cancellation of business would have a relative effect upon the unearned premium; but what that percentage is, I don't know.

[fol. 1251] Q. Now, if you return a premium your earned part is retained and the unearned part is returned, is that true?

A. Yes.

Q. And therefore when you are returning the unearned part and relating it to the written figure you have a different ratio than if you are relating that returned part to the unearned figure?

A. Yes, of course.

Q. Have you undertaken to make any estimate of about how the conflagration payments of the companies on the conflagration losses run, with relation to premiums, over a period of years?

A. Yes. I looked into that just within the last day or two, knowing that I was going to testify here, but the time was very limited and the information that I got I couldn't say was absolutely accurate, because of not having sufficient time to get all the data I wanted.

Q. With the understanding that it is not calculated with certainty, have you made a calculation which you are satisfied approximates somewhat the conflagration figure over a period of years?

A. Yes. I should like to read that from my memorandum, if I may.

Mr. Jacobs: One minute. I don't know anything of course, about what this question and answer will develop, but the witness is premising his whole answer by saying he hasn't had sufficient time to investigate the matter and arrive at a result satisfactory to himself, and what he is going to testify to now apparently is an answer for which he can't vouch himself. I object to it on that account.

[fol. 1252] The Referee: Do the figures which you are now about to give, Mr. Froggatt, approximate correctness with reasonable accuracy?

A. Yes, sir.

The figures that I have taken are the figures given in a published record, "Distribution by states of fire insurance," from the Spectator Company.

The companies were required—were not required to separate fire and marine premiums, I will say. Here recently they have been required by the states to make an absolute separation of marine premiums from fire premiums, but up to very recent years all of the premiums were put in those statistics as one, representing fire premiums, so that the records would not be complete as to a separation between fire and marine premiums. I shall be very glad to give these statistics that I have gathered, with the understanding that they do not absolutely represent fire premiums only.

The Referee: Who gathered those statistics?

A. They were gathered by my office.

Mr. Jacobs: Well, you mean the statistics that he has copied here, or the original figures?

A. The Sepectator Company, which is a publisher of insurance statistics.

The Referee: They made the original compilation?

A. Yes. These are taken from their records. They publish these records.

Mr. Folonie:

Q. What is this "Spectator," what do they publish these figures for?

A. For the information of the public.

[fol. 1253] Q. Do insurance companies subscribe to that publication?

A. They do.

Q. And is that concern engaged in collecting figures from year to year and publishing them?

A. All the time; with reference to all kinds of insurance business.

Q. What, do you know, is the source from which they gather those figures?

A. I remember very well that they used to come to the office of which I was secretary and get our results on a blank which they would provide.

The Referee: How long has that company been engaged in that line of business?

A. I don't know exactly, but to my knowledge for over twenty years.

The Referee: What is its reputation for truth, veracity and accuracy?

A. Very good reputation.

The Referee: Are its publications recognized in the insurance world as having any standard value?

A. I think so, yes.

Mr. Jacobs: It is an insurance paper, isn't it?

A. They publish the insurance paper called the "Spectator;" and then they publish on each side these various statistical records.

Mr. Folonie:

Q. Are the tabulations they make of premiums and losses and things of that kind published to serve any par-

ticular purpose or any particular object, or are they just a matter of general information in the insurance world?

[fol. 1254] A. General information.

Q. Directing attention particularly to whether they are published with a view for being used for purpose of some individual or group of individuals, or just a matter of public information?

A. Public information.

Q. Are their tabulations recognized in the insurance world as reasonably accurate tabulations of the combined experience of the companies?

A. I think they are.

Q. Now, if any element of error that exists in the premiums you mentioned, by the inclusion of marine premiums with fire premiums, it would result in an enhancement of the premium figure, would it not?

A. Yes, it would increase the premium figure.

Q. And therefore by using it to make your proportions, it would result in making the calculation you make, taking the proportion of conflagrations and the whole insurance, would you make your percentage when you reach it lower than it would be for the fire premiums alone—if the fire premiums alone were considered?

A. Yes.

The Referee: The effect of the error would depend upon the nature of the error, would it not?

A. It would not be an error. It would be the fact that I have not got a separation of the two classes of business. We have more premiums because of the marine premiums being included, but so far as the losses are concerned, they are actually fire conflagration losses, the result being a decrease in the percentage of conflagration loss.

[fol. 1255] Mr. Polonie:

Q. So that if any element of error exists by the inclusion of marine premiums, if you would correct it it would be by eliminating from the total of the premiums so published the marine item, if it were separable?

A. Yes.

Q. You are not able to separate it, the way it is published?

A. No.

Mr. Jacobs: What period of time have you made your computation respecting?

(No answer by the witness.)

Mr. Jacobs: Let me make my objection here.
Mr. Folonie: This is still preliminary.

Q. Over what period of time have you made your calculation?

A. Ten years.

Q. And what ten years?

A. 1914 to 1923.

Q. Now, what, upon the calculation you have made, were the total premium writings in the United States of companies engaged in the fire and tornado business for that period, and the loss by conflagration during that period, and the percentage of the conflagration figure to the premium figure?

Mr. Jacobs: Now, one minute. The defendant objects to this testimony because it calls for hearsay testimony, because it calls for testimony from a source which is secondary in its nature, and because it does not tend to prove or disprove any issue in this matter, and because it covers a period beyond the period under inquiry in this particular case, and because it is purely a self-serving document. [fol. 1256] The Referee: Overruled.

(To which action and ruling of the referee the defendants by counsel then and there at the time duly excepted.)

A. The premiums amount to $5,025,802,208. The property loss by conflagrations in the same period amount to $350,175,000.00, or 6.96 per cent of the premiums.

Mr. Folonie:

Q. Now, in your connection with the insurance companies that you mentioned, you were connected with actual examination of the records of other companies since that time—what has been your observation, if you have made any observation, as to the conflagration cost as related to premium writings?

A. The conflagration cost as to premium writings, I have just described as being 6.96 over a period of ten years.

Q. Yes, and now I am asking, not from this compilation but from your knowledge in the companies with which you were connected and your experience as an accountant since, what does it indicate as to the approximate accuracy of the figure you mentioned?

A. I never have particularly taken up the question of percentages of conflagration losses to the premium writings of the company with which I was connected, nor as a general proposition have I calculated this experience as a whole.

Q. That answers the question.

The Referee: You are using the term, "Conflagration [fol. 1257] losses" in the sense in which it is used, namely as indicating losses of a million or more?

A. Yes, sir.

Mr. Folonie:

Q. Is that definition of a conflagration generally adopted in the insurance world as properly defining a conflagration?

A. Yes, sir.

Q. What method in your experience—from your knowledge and experience in the business, what do you say as to the propriety of imposing the entire fire loss occurring within a particular state upon the citizens of that state, by undertaking to recoup it by rates of insurance within that particular state, without spreading it further?

A. I would say that it should not be done. In the first place, no state can take care of itself from the premium writings in that particular state. There are instances, numerous instances, in fact, which would prove that a very small percentage of a conflagration would be payable to the citizens of any particular state, if they were payable on the profits or out of the premiums written in that particular state alone.

I tried to figure out here the California conflagration on that particular basis.

Q. You may state the results of your calculation in that particular instance.

A. I find for 38 years, up to and including 1922, insurance companies operating in California received premiums of $474,450,634.00, and the losses incurred on this business amounted to $353,149,253.00, with expenses of $162,329,025.00, showing a loss on their operations for 38 years of $41,027,644.00.

[fol. 1258] Now, in your losses incurred in that figure, do you have in that the Frisco conflagration?

A. All losses incurred during the 38 years.

Q. Now, have you undertaken to make a calculation by attempting to prorate capital and surplus to the state of California in the ratio that the California premiums bear to total premiums of the United States, to see what effect—what relation that would have to the losses occurring there in their conflagrations?

Mr. Jacobs: Will you read that question?

(Question read by the reporter.)

Mr. Folonie:

Q. Now, you may state that calculation.

A. The California premiums were $10,353,046.00. The total premiums of companies admitted to California were $210,681,479.00, which is 4.9147 per cent.

Q. Is that for the year when the conflagration occurrred?

A. Yes. The total capital and surplus of companies admitted to California was $203,652,919.00, of which 4.9147 per cent equals $10,008,930.00.

Q. In other words, if you undertake to allocate the capital of all companies doing business in the State of California that year, your capital would have been this ten million dollars?

A. Yes. The total property loss by the conflagration was estimated to be $350,000,000.00, and the total insurance loss was estimated to be $200,000,000.00.

Q. Now, do these figures you have mentioned appear in the California State Insurance Report for that year?

A. Yes, for 1906.

[fol. 1259] Q. So that on the theory of doing business on a capital of ten million in the state, there would have been an insurance loss of $200,000,000.00?

A. $200,000,000.00, yes.

Q. How many companies failed as a result of the Chicago fire of 1871?

A. Seventy-four.

Q. And what was the combined capital of those 74 companies which failed in consequence of that fire?

A. $20,678,462.00.

Q. What surplus had they?

A. $5,127,624.23.

Q. How many companies failed as a result of the Baltimore fire of 1904?

A. Six.

Q. What was their combined capital and surplus?

A. $2,116,943.00.

Q. Now, as the result of the conflagration in San Francisco in 1906, how many companies failed and what was their capital and surplus?

A. 15 companies failed, having a combined capital and surplus of $13,349,243, and 44 other companies had to pay in capital and surplus of $27,703,205.00 in order to remain solvent, or a total capital and surplus loss was sustained of $41,052,448.00.

Q. Now, as a result of those three conflagrations, alone, excluding all other conflagrations, how many companies failed and what was their capital and surplus?

A. 139 companies failed; with a loss of capital and surplus of $68,975,477.00.

Q. Is there any allowance made to policy holders prepaying their premium and thereby losing the use of their money for any period of time by the method of doing the business of insurance, and if so, how is it done?

[fol. 1260] A. In the writing of three year policies, they are written for a premium of 2½ times the annual rate, and five year policies are written for four times the annual rate.

Q. From your knowledge of the business, if in addition to making such allowances to policy-holders, if the earnings or interest upon the unearned premium were to be calculated and further go in reduction of the underwriting profits otherwise to be recovered by the companies, what would be the effect upon the insurance business, in your judgment?

A. I should think there would be very little inducement for the public to invest its money in insurance stocks.

Q. What, in your judgment, is a reasonable underwriting profit of companies engaged in the business of writing insurance against the hazards of fire and allied lines?

A. You mean by that question what do I think they ought to make?

Q. Yes.

A. I would say five per cent.

Q. And should they, in addition to that, in your judgment, receive an additional amount to care for the hazard of conflagration?

A. Yes, sir.

Q. And what, in your judgment, should that be?

A. The hazard of conflagration as I have calculated it on the property loss basis is 6.96 per cent. On the fire loss basis, I don't know what that might be, but assuming that it would be 50 per cent, then I would say that they ought to have a provision of three or four per cent.

The Referee: Now, on what do you base your answer to the last three questions?

[fol. 1261] A. On the fact the companies have lost through conflagrations.

The Referee: That doesn't quite get what I have in mind. You have given your opinion, your conclusion as to what would be a fair percentage to be received.

A. Yes.

The Referee: Why do you think that fair?

A. Because of the fact that as an investor in fire insurance stock, I am taking a chance in a hazardous business where my investment might at any time be wiped out. In view of that, I am entitled in my opinion, to a reasonable profit.

The Referee: Well, how do you determine what a reasonable profit is? What factors do you take into consideration to determine what constitutes a reasonable profit?

A. What constitutes a reasonable profit is a reasonable return on my investment.

The Referee: Well, what do you take into consideration in determining what is a reasonable return on the investment?

A. An amount in dividends which I would expect to be paid to me by my company for the risk I am taking.

Mr. Folonie:

Q. Is the risk, compared to business ventures in general, high or low?

A. I should say it was high. My experience would indicate, from conflagrations like San Francisco and Chicago and Baltimore, that I might at any time be called upon to save my company by paying in an assessment to go to sur- [fol. 1262] plus account, as was the case in the Hartford fire and others.

Q. How much did the stockholders of the Hartford fire pay in, if you know, after the San Francisco fire—if you know?

A. I don't know what it was, but I think it was $500 a share.

Q. The alternative to paying in those amounts after having paid the capital in in full would be losing what they had already invested?

A. Yes, the company's surplus was wiped out.

Q. Now, if your return from the investment you made in a fire insurance company were to be put on the same basis as returns that you could get on investments in mortgages, Government Bonds, or gilt edged securities of railroads and industrial concerns, would there be any incentive for people to invest their money in insurance stocks?

A. No. That is why I think they ought to have a little more, because of the hazard we are taking as investors in insurance stock.

Mr. Folonie: You may cross examine.

The Referee: I want to ask one question. A reasonable profit or return to the investor, then, I deduce from what you have said, is such a return as will be sufficient to induce him to invest his money in that particular line of business?

A. Yes, sir.

Mr. Folonie:

Q. Do you think the perpetuation of stock insurance companies, entirely aside from the return it makes to the investor in such stock, serves a valuable purpose to the public?

A. I do.

[fol. 1263] Q. And the business world?

A. I do. I think that a great many of us prefer to pay out insurance premiums and be reasonably sure that our losses are going to be paid when they occur, rather than to take our insurance in a mutual company where we might possibly be called upon to participate in a loss.

Mr. Folonie: You may cross examine.

The Referee: We will adjourn for lunch now until one-thirty this afternoon.

(Whereupon an adjournment was taken until 1:30 o'clock in the afternoon of the same day, the same being Tuesday, the 16th day of October, A. D. 1923, at which time parties reconvened at the same place and the following proceedings were had:)

Joseph Froggatt, recalled, having been produced as a witness on behalf of the plaintiffs and having been previously sworn, was recalled for cross-examination and testified as follows:

Cross-examination by Mr. Jacobs:

Q. Mr. Froggatt, what states have you represented in the matter of determining the solvency or insolvency or the general condition of insurance companies?

A. Massachusetts, Connecticut, Maryland, North Carolina, Illinois, New Jersey. I think that is the list, as far as I recollect it.

Q. Were you called in in some controversy between the companies and the states, or were you called in for other and general reasons?

A. Just general reasons.

[fol. 1264] Q. And you were called in for what purpose?

A. To make the usual examination, which would otherwise be made by the state itself.

Q. You mean the examinations of what?

A. Examination of the company's affairs, reporting upon its financial condition as of a certain date.

Q. By that do you mean that these states have annual reports which you examine or pass upon, or do you get into the books of the companies themselves?

A. Books of the companies.

Q. And you report to these various departments?

A. Yes.

Q. And you report, you say, a number of companies which are regularly your clients?

A. Yes.

Q. How many companies do you represent?

A. I couldn't state.

Q. Roughly?

A. I don't know the exact number.

Q. I don't care about the exact number.

A. Well, I should say forty or fifty companies throughout the United States.

Q. Those companies are on your books regularly?

A. Many of them are.

Q. And other companies you are called in on occasion to audit their books?

A. Yes, yes; that is right.

Q. Among your clients in the Home Company, one of them?

A. Home Insurance?

Q. Yes.

A. Yes.

[fol. 1265] Q. They are one of your regular clients?

A. Only for their branch offices; not for their home office.

Q. That is, for all their branch offices?

A. For all their branch offices, yes.

Q. Do you or some representative of your office go to their various branch offices and audit their books?

A. Yes, some quarterly and some annually.

Mr. Folonie: Is that within the United States, or the whole world?

Mr. Jacobs: The United States.

A. The United States.

Mr. Jacobs:

Q. Some of these places you say you go to quarterly and some of them semi annually?

A. Yes.

Q. You are reasonably familiar with the condition of the Home Company, then, and with its books, and perhaps have some knowledge of its business history?

A. Yes, I would say—I couldn't say familiar with its general books at the home office, because we haven't made an examination of the company here; but at its branch offices.

Q. Have you never passed on the home books?

A. No, never on the home office books of the company.

Q. Now, in examining the books of the branch offices of this company and others, we will speak perhaps particularly of this company, since you represent them and is has been under inquiry last—do you know anything about the business done in the home offices or through the home office—I mean insurance business—policy business?

A. I don't quite understand you.

[fol. 1266] Q. Now, the company is divided into zones and districts, isn't it?

A. Yes.

Mr. Folonie: I think he is confusing the home office and the Home Insurance Company.

The Witness: I speak about head offices—I mean head offices when I speak about the "home offices."

Mr. Jacobs: The head office?

A. Yes.

Q. Where is the head office of the Home Company?

A. Here in New York.

Q. And you have never gone into its books?

A. No, I haven't made an examination of the head office book of the Home.

Q. But you have been into the books at the various districts of the company?

A. The branches, yes.

Q. Do you know whether or not the premiums reported in these various districts are the premiums done within that district alone?

A. No.

Q. You don't know whether that is a fact?

A. I don't know, no.

Q. Well, in determining the condition of the company in its various districts or branches, did you inform yourself of the scope of the business you were investigating, whether or not you were getting a report of what the books show, whether or not you were getting a report there of the premium business done within that district, for the district alone?

A. I would if I had gone into the fact of whether they wrote it in that district or outside of it.

Q. But you don't know about that?

A. No, I don't know.

[fol. 1267] Q. That is a fact—if it is a fact that those districts only report the business done within the district, then you have no knowledge of the total business done by the company at all, have you?

A. Only as reported in general public print, that is all.

Q. Do you know, then, as a fact that the home office or the head office does an insurance business out of the head office—if it does?

A. I know that it does it in those branches.

Q. Yes, but do you know whether it does it as well in the head office?

A. I know it does business in New York, yes. It has a Metropolitan department right here.

Q. Do you have anything to do with making up the annual statement reports to, say the State of Missouri, of this company?

A. No, sir.

Q. The underwriting report?

A. No, sir.

Q. The expense report?

A. No, sir.

Q. Or the tax report?

A. No, sir.

Q. You have nothing to do with any of them?

A. No, sir.

Q. If these districts only report the business done within the district, and the statements made to the State of Missouri are made up in the various districts that would not reflect the true condition of the business of the company, would it?

A. Well, it would not if the company should write any business in that district from some other quarter, no.

Q. Or if it writes any in the head office, would it?

A. That is what I mean; head office or from some other branch office.

[fol. 1268] Q. If there is business written in the head office, those premiums would not appear in the district reports, would they?

A. Not necessarily, although some companies have a rule of having such premiums reported through their particular office or territory in which the risk applies. I don't know whether the Home does or not.

Q. You don't know?

A. No.

Q. Your idea of the computation of the business of the company is to divide it into two separate and distinct classes?

A. Yes.

Q. The underwriting business and investment business?

A. Yes.

Q. Do you mean by that that there should be complete severance in every respect of those two branches of the business?

A. Do I understand you to mean a complete severance as to obtaining results under the two branches?

Q. Yes.

A. I think they should be kept distinct, yes.

Q. Entirely?

A. I don't know what you mean by entirely.

Q. Well, I mean just what the word implies. You have testified that there should be a complete severance of those two branches of the business.

A. Yes; the company should know its investment results and its underwriting results; I think they should know.

Q. Now, for the purpose of rate making, do you still say that that is a fact, that there should be a severance of the two branches of the business?

A. For the purpose of rate making?

[fol. 1269] Q. Yes.

A. I don't think that investment income has got anything to do with rate making.

Q. Then you believe there should be a complete severance?

A. Yes.

Q. Into these two branches of the business?

A. Yes.

Q. And when you say that you mean exactly what the words imply?

A. I don't know what you mean by a complete severance. I said there should be a knowledge by the company of the exact results in the two classes of business.

Q. Well, should there be any overlapping between those two classes of business?

A. Overlapping in what respect?

Q. Well, for example, in the matter of expense?

A. There might be.

Q. Well, there would not be a severance to that expense—a severance to that extent, would there?

A. They would separate them as a bookkeeping matter, yes.

Q. And do they separate them, as a bookkeeping matter?

A. I think they do.

Q. Now, your understanding and your theory of the matter, as I understood your testimony today, Mr. Froggatt, is that for purposes of rate making you should only consider the underwriting experience in any particular state?

A. Yes. I had not made that statement, but will make it now.

Q. You say you have not made that statement?

A. Not before, no; I haven't been asked such a question. [fol. 1270] Q. I understood you to so testify.

A. Rate making was not mentioned, that I remember.

Q. You testified that the true experience in the State of Missouri would be limited to underwriting experience, didn't you?

A. I don't think I even said that.

Q. You did not. Well, you say it now, though?

A. I say the underwriting experience in Missouri could be ascertained.

Q. And do you say that should be the sole basis of rate making?

A. I think so. I will say that now, yes; I think so.

Q. And that no earnings, either from the reserve or investment earnings of any kind should be considered in the matter of making rates?

A. Yes.

The Referee: Pardon me, Mr. Jacobs. Do you mean, Mr. Froggatt, that you think the underwriting experience in the State of Missouri should be made the basis of rate making in the State of Missouri?

A. Underwriting experience, yes.

The Referee: In that state?

A. In that State, yes.

The Referee: And not affected by the general experience throughout the country?

A. Yes, I think so.

The Referee: And you think it should be paid solely on the Missouri experience, then?

A. Yes.

The Referee: Without taking into consideration experience in other states?

A. Yes. That is my idea of it.

[fol. 1271] Mr. Jacobs:

Q. That applies also to a condition where a conflagration arises?

A. That is an abnormal condition.

Q. Well, you didn't anywhere in that statement just made to the court——

A. (Interrupting.) I beg your pardon?

Q. You except conflagration, then?

A. There is always exceptions in these things. They have to be taken on a common sense basis. If you had a conflagration in Missouri, too, you would make that—you would consider that, if you were making rates.

Q. Suppose the conflagration was in California?

A. Then it would not apply in Missouri.

Q. You don't think it should be considered, then, in arriving at a rate in Missouri?

A. My idea is it is made on the basis of experience in Missouri.

Q. But to get a definite answer to the question, you don't believe that a conflagration experience in some other states should be considered in arriving at a rate in Missouri, do you?

A. Well, I think all states should share in their proportion of the conflagration experiences throughout the country.

Q. Then you mean to say that the experience of fire insurance companies in other states is sometimes considered in arriving at a rate generally over the country——

A. (Interrupting.) Only in this conflagration matter, where you can't do any other than through the whole business.

Q. In no other respect?

A. No other respect that I know of. I am not an underwriter, but I don't believe they do.

[fol. 1272] Q. Now, who pays the expense of your investment department—of the investment department and banking departments of the insurance companies?

A. The company itself.

Q. The company pays it?

A. The company itself.

Q. You are sure of that?

A. I don't know who else would.

Q. You feel that they should pay it if they are to receive all the profits, don't you?

A. Certainly.

Q. Well, now, if as a matter of fact the expenses of the banking departments are allocated to the different states for the purpose of rate making, do you think that ought to be done, if there is a complete separation of those two departments and rates should be fixed on an underwriting experience alone, in the state?

A. I think the company ought to pay whatever time is spent by its officers in the investments end of the business, it should be paid out of the investment earnings of the company.

Q. In other words, it should be a corporate expense separate from the underwriting expense of the respective states, for the purpose of making rates; that's right, isn't it?

A. Yes, that's right.

Q. Very well. Now, Mr. Froggatt, at the end of the year, when you figure the business experience of a company, you charge against the company all—you charge all the expenses of every kind that the company has suffered, don't you?

A. You are now speaking about figuring the general expense of the company?

Q. Yes.

A. Yes.

[fol. 1273] Q. Well, take for example the Home Company, and at the end of the year, when you figured those operations with respect to profit or loss, you charge them all the expenses of every kind and character?

A. Yes.

Q. Now, do you mean by that that at the end of the year all the salaries of the agents, officers and people connected with the company are charged as an expense on the books?

A. Yes, that is what I mean.

Q. And you mean by that that all other expenses such as commissions and everything of that kind are charged?

A. Yes.

Q. For salary?

A. Yes.

Q. Office expenses?

A. Yes.

Q. Office help?

A. Yes.

Q. And supplies of every kind?

A. Yes.

Q. Now, that is a fact, isn't it?

A. Yes, it is a fact.

Q. Now, when you start out the year, you speak of collecting insurance premiums from the agencies of the company, that is right, isn't it?

A. That is right.

Q. And out of $100 premium you figure the company will get something like $60?

A. Right.

Q. Because you have estimated that out of that amount of money there will be $15 for general expenses—officers' salaries, office expenses and stuff of that kind?

A. I don't know just what you—the commission average and the office average, but the general usual expenses of companes run 40 per cent; as to how you divide that between the two, I don't know.

[fol. 1274] Q. Well, I am taking the figures that you gave in your direct examination. You figured about 25 per cent for agency commissions.

A. I don't think I gave any such figures.

Q. You think you didn't say 25 per cent for agency commissions out of the first——.

A. (Interrupting.) I don't think so.

Q. And 15, at least, for other expenses?

A. I don't remember testifying to that effect.

Q. Making a total of $40?

A. No, I don't remember saying that. No, I don't.

Q. Well, is it a fact that $40 about covers the situation?

A. $40, yes; but I don't know about the division you mentioned.

Q. Is it not a fact agency commissions amount to about 25 per cent?

A. About that.

Q. Then $25 would be about right?

A. It seems to me that would be nearly the mark.

Q. And the other $15 would make the $40?

A. Yes.

Q. You have no recollection of testifying to that division?

A. No.

Q. That leaves a balance of $60 which goes where?

A. Into the surplus of the company; into the funds of the company.

Q. What funds?

A. General funds.

Q. And by general funds you mean what?

A. Where all the money goes; into the investments or into the bank.

[fol. 1275] Q. What would you characterize that fund, or those funds?

A. Assets.

Q. Do they constitute a part of the reserve—unearned premium reserve—that $60?

A. Yes.

Q. Now, that goes into your funds—makes up part of the unearned premium reserve, doesn't it?

A. It does.

Q. And that constitutes the basis, as one unit of $100 premium, of your general fund of the company—your unearned premium reserve—possibly part of your surplus at some time, is that right?

A. That is right.

Q. But at the end of the year you say that you charge all your expenses of every kind and character?

A. Exactly.

Q. What did you say this morning—how did you define what was called by Mr. Folonie as the hidden profit in the premium reserve? How did you define that this morning?

A. I don't remember now the exact language.

Q. Well, I don't care anything about that.

A. I said that if the assured called for the cancellation of his policy—every assured, the company would have to pay back the full return premium or the full unearned premium.

Q. Now, of course, you testified today that you had never known as a matter of experience of all these policy holders or any great number of them to cancel their policies and call for a return of the unearned premium?

A. That is right.

[fol. 1276] Q. So that is really not a practical situation is it—according to the experience of the companies?

A. Well, I don't know what you mean by practical. It is a possible situation.

Q. A possible but not a practical situation, is it?

A. I don't know exactly what you mean by the word practical there.

Q. I mean it has never been done within your knowledge?

A. I will agree with that.

Q. And you don't anticipate it being done—according to your experience?

A. No.

Q. And the companies don't figure that way?

A. I don't believe they do.

Q. That is what I mean by the "practical" situation.

The Referee: You mean possible but not probable?

A. Yes, possible but not probable.

Mr. Jacobs:

Q. And it is so improbable that in the entire experience of insurance as far as you know it in this country it has never transpired, has it?

A. So far as I know, it has not.

Q. Now, when you charge all the expense of the company at the end of the year, don't you charge something that was already paid originally when only $60 was credited to the company's fund, out of that original $100—speaking of that orignal unit?

A. No.

Q. Don't you charge as an expense at the end of the year the salaries of the officers?

A. Well, those that have been paid during the year.

[fol. 1277] Q. And don't you charge as well the 25 per cent or thereabouts which constitutes the agency commissions?

A. Absolutely; month by month.

Q. It is figured at the end of the year?

A. As a total; of the payments made during the year.

Q. But 25 per cent of that $100 was paid and was never received by the company, because it was never remitted, was it?

A. No, the agents pay on the net balance.

Q. They keep it, in other words, and remit the balance?

A. Yes. The company charges up $100 premium on one side and charges off the commission on the other.

Q. But at the end of the year don't they charge that agency commission of 25 per cent again?

A. No.

Q. Don't they charge it against that sum that actually comes into the hands of the company?

A. No. They charge against the $100.

Q. You say that they do not charge it at the end of the year after having actually paid it by a retention of that amount by the agent in the beginning?

A. No, no.

Q. How about the $15, the balance making up the $40?

A. That is charged the same way; as it is expended during the year.

Q. And is totalled at the end of the year?

A. Total of the twelve months, yes.

Q. But you deduct that $15 when you were figuring this money that went into your reserve in the beginning, didn't you?

[fol. 1278] A. Yes, because of the fact that it cost $40 out of a $100 to do business to this company.

Q. I know, but when you only credited $60 to the reserve fund——

A. Yes, that is all that is there; that is, that is all that would be net there.

Q. And you counted that out in the beginning and credited the reserve fund with the sum of $60?

A. You mean on the books of the company.

Q. Well, when you were discussing it this morning.

A. Yes, when I am making a calculation.

Q. And only credited that fund with $60?

A. Yes. I said that was all the company received, was $60, because it paid out commissions and expenses of $40 out of the $100.

Q. How is that?

A. I said that was all the company received net, because it paid out of the $100 the 40 per cent in getting the business and carrying it on.

Q. So you put down $60 there?

A. No, I didn't say anything about putting it down. We put down $100 on the books. We charge expenses on the other side, so it makes sixty net.

Q. Well, you actually get $75, though, don't you?

A. Yes, but eventually they pay out the other 15 in the conduct of the business.

Q. Eventually they pay that out?

A. Yes.

Q. But it is charged as an expense at the end of the year?

A. During the year, whenever it is paid.

Q. And yet you only credit the fund, though, with $60?

A. Where is there any more to credit with?

Q. Well, you got $75, didn't you?

A. No, I only got $60.

[fol. 1279] Q. Don't you annually get $75 from the agent?

A. Might get $75 from the agent, or might get $60; you might have 40 per cent commission on some policy.

Q. Yes, but we are talking about the lines of your figures this morning.

A. Of averages. If the agent deducted 25 per cent then the company would get 75 when they collected his balance. They charge themselves with $100 and they—credit themselves with—no, they charge themselves with $100 as having received that money, and they credit themselves with a payment of $25 to commission account, if that is the commission.

Q. And how much do they credit to the unearned premium reserve?

A. They put—the unearned premium reserve is—if it is an annual policy, they will put $100 in force and set aside as unearned premium 50 per cent of it.

Q. How much would they charge on $100—how much would go into the unearned premium reserve out of a $100 policy?

A. Annual policy, $50, unearned premium reserve.

Q. Did you say sixty today—at any time today?

A. I don't know that I did.

Q. Where would the $60 go? What did you say this morning about the sum of $60—out of that $100? Let's see, there was forty you said——

A. (Interrupting.) I said the company only would have $60 out of that premium, because it would collect $100 and would pay out in expenses $40.

[fol. 1280] Q. And didn't you say that out of that sum that this $60 would go into the reserve.

A. No, I don't think so.

Q. Well, does it?

A. $100 goes into the reserve account, and $50 is carried as unearned premium liability.

Q. Now, when you say $15, when you figure on the basis of $15, how do you know there is going to be this expense of $15?

A. I don't know, except from general experience with the companies.

Q. That is based upon a calculation?

A. General experience statistics of insurance companies published from year to year show an average expense of 40 per cent.

Q. The fact of the matter is that insurance business is largely done on experience and because of statistics and averages, isn't it—except perhaps the fire insurance business, that is a more certain proposition?

A. I think so.

Q. Now, you believe that you should figure the whole situation on earned premiums, that is for a safe experience for the purpose of making rates, earned premiums and incurred losses and expenses?

A. I think that is the way to figure an underwriting profit or loss.

The Referee: Permit me a question there:

Q. Mr. Froggatt, out of the typical $100 received I understand you to say that normally 25 would be charged on the books as the agent's commission, retained by the agent?

A. Presuming that is the rate of commission paid.

[fol. 1281] Q. And that is the usual rate?

A. Well, sometimes 15 and sometimes 20, 25, 30 or 35; according to locality and class of business.

Q. The average is about what?

A. I think the average commission runs somewhere from 22½ to 25 per cent.

Q. Very good. Then take the typical case of $100, $25 would be at once applied to the payment of the soliciting agent's commission?

A. Yes.

Q. $15 would be applied to the general expenses of the company?

A. Yes. That is, it would be applied whenever paid.

Q. Certainly.

A. Yes.

Q. Then I understood you to say a moment ago that $50 would go into the unearned premium reserve fund?

A. Yes.

Q. What becomes of the other 10?

A. Got to have something to pay losses with.

Q. Well, I am asking what become of that $10?

A. Goes to meet losses.

Q. Put aside into a fund for payment of losses?

A. It is not put aside into any fund, but it is retained in the general assets of the company, out of which losses are paid whenever they arise.

Q. How does that $10 differ in the method in which it is handled from the $50?

A. Not a bit.

Q. Then why do you say $50 is put in one place and $10 in another?

A. I don't mean literally. I mean that the company by law is compelled to set aside a liability or reserve for un-

[fol. 1282] earned premiums, representing this $50.

At the end of the year they are also compelled to set aside a liability for all unpaid claims known to them at that time. That is a bookkeeping matter.

All the funds go into one fund and they buy real estate and so forth with those moneys and as they need the money for the payment of expenses or losses it is taken out of this one general fund. The bookkeeping does the distribution.

Q. Of the typical $100, what sum goes into what you have termed the general funds of the company?

A. Whatever is collected from the general agent.

Q. Well, of the $100 proposition?

A. If the agent paid them $75, that would go into the bank. The books of the company would show it as an agency collection. It would be charged up into premium account, and expenses on the other side.

Q. Then you allow 15 out of that 100 for expenses?

A. Not unless it is actually incurred.

Q. Well, you calculate on that basis in the illustration?

A. Yes, sir, because that is general experience.

Q. And that leaves $60 that goes into the general fund of the company?

A. Yes; whatever moneys are left. Whatever they collected from the agent goes into the general fund of the company, out of which they pay the general expenses and losses, and then the bookkeeping does the general separation of the earnings when reporting at the end of the year.

[fol. 1283] Mr. Folonie: When they get the $75 balance from the agent do they set up or deduct any $15 or any other sum to meet expenses to come in the future?

A. No. $75 is the—if you want the real entry that is made on the company's books, why, it is made as the agent writes a policy; he sends in a daily report describing what he has done and how much premium is represented, and that is registered on a book in the company's office.

At the end of the month the agent renders a report of all these premiums written. They are set up, checked up against this register of his business. The total premiums, premiums less the expenses, are charged—the net item as agency balances, due from the agent, and that is the asset item, uncollected, which appear in the annual statement.

Now, in the meantime all these other ramifications take place on the company's books and naturally charge premium account with the $100; or credit premium account with the $100, and charge expenses with whatever expenses have been incurred, as reported by the agent.

Now, during the year you have home office salaries and other expenses, and they will go into the various expense accounts.

At the end of the year you report your gross premium writings, less your cancellations, less your reinsurance, to

get your net premium writings; and you get any other income you may have.

[fol. 1284] On the other side you report your losses paid and all the various expenses and you arrive at the net assets you have at the end of the year.

Then you segregate this, showing what they are made up of, and on the other side of that you set up your liabilities for unpaid losses, unearned premiums, other liabilities, and show your capital surplus.

The Referee: Would it be correct to say that $75 of the typical $100 goes into the general funds of the company?

A. As a whole. That is, we are assuming now, of course, that $25 is the commission.

The Referee: Certainly.

Mr. Jacobs (continuing cross-examination):

Q. Now, I believe I asked you a moment ago if it was your thought that for the purpose of rate making and to arrive at an underwriting experience in any particular state, assuming that that is a proper basis of rate making, that you use the earned premiums and the incurred losses and expenses—incurred expenses.

A. My reply to that will be that I don't know anything about your idea of rate making, but to arrive at underwriting profit or loss we use the earned premiums, the incurred losses and the incurred expenses.

Q. Now, covering each particular year of a period, say the period under inquiry in this hearing which is from '17 to '21, inclusive, both ways, at the end of each particular year all the agency expenses and all the expenses of the state are charged against that state in arriving at a figure—at a conclusion of what the year's business amounts to, one [fol. 1285] way or the other, that is a fact, isn't it?

A. Yes.

Q. Every expense. For example, if 25 per cent is a fair average of agency commissions there would be a charge of 25 per cent as one of the expenses on the total amount of premiums written or received?

A. Yes, that is right.

Q. And that would be true of every other kind of expense—in other words, you would actually charge the expenses of whatever it amounted to?

A. Exactly.

Q. In toto.

A. Yes.

Q. Now, what is the average of premiums received—what is the average amount at the end of the year which is earned and the amount which is unearned?

A. Now referring to all the premiums written by a company?

Q. In the state, yes.

A. Well, one state would be about the same as any other state, unless they happened to write a different class of business.

Q. Yes.

A. Well, that would depend, as I said this morning, as to the classification of the business written. If you write a preponderance of three or five year business the unearned premiums in the course of five years, that is, the accumulation of these term policies, might run over 100 per cent of the premium.

Q. Well, but let us take as you say it actually is from experience, or at about an average of what it would be. Is it fact that about 25 per cent of this is earned and that about 75 per cent of it is unearned premium?

A. No, I think it is nearer—the average runs from about 80 to 85 per cent.

[fol. 1286] Q. Well, then, say 80 to 85 per cent would be unearned premium?

A. 85 per cent of the premium written would represent unearned premium.

Q. And the 15 or 20 per cent would be earned premiums?

A. The 15 or 20 per cent would be the balance remaining out of that particular premium.

Q. Well, I don't know whether you misunderstand me or I misunderstand you, Mr. Froggatt. What I am getting at is this: At the end of the year you have done a certain amount of premium business.

A. Yes.

Q. As an average, 80 or 85 per cent of that is unearned premium at the end of the year?

A. No. I don't think we understand each other. My statement is that under the rules of the departments as to the amount of unearned premium which shall be set up as a liability under the various classes of policy the average will be 85 per cent of the total premium writings.

Q. Well, that is about what I said, wasn't it?

A. Yes.

Q. Well, the balance is earned premium, isn't it?

A. I wouldn't say that, no.

Q. Well, of the $100, the $100 or $500 that you would receive the first of the year—sometime during the year, or whatever time you receive it—striking a law of averages according to your experience, part of that is earned, isn't it?

A. Yes.

Q. And part of it is unearned at the end of the year?

A. Yes.

Q. What would be the average that would be unearned premium?

A. If we assume the 85 is unearned premium, then the 15 [fol. 1287] per cent would be earned on any particular policy.

Q. Now, when you figure at the end of the year on the experience of the company you figure the earned premium or the 15 or 20 per cent, don't you?

Mr. Folonie: We object to any assumption that the earned premiums for a particular period would relate only to earned premiums accruing during that period and ignoring the writings of the previous period, which would become earned during that particular period and would go into that period although not then written.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now answer the question.

(Question read by the reporter.)

The Witness: May I have the question read again, please?

(Question again read by the reporter.)

A. We figured the earned premium which relates to all premiums earned during that period, yes.

Q. Those are all the premiums—that 15 per cent or 20—if it is 80 or 85—that is all you figure for that year's business, isn't it?

A. No.

Q. You don't figure any unearned premium on that year's business?

A. No, but I figure the earned premium on all policies which are earned during that period, and they are applied to the——

[fol. 1288] Q. (Interrupting.) You figure as far as that year's business is concerned only the earned premium, or the 15 per cent, don't you?

Mr. Folonie: We object to the assumption that the earnings on the year's business is the equivalent of the earned premiums during that period, accruing during that period, which are entirely a different thing, and we object to the assumption.

Mr. Jacobs: I haven't made any assumption. I am merely asking him with reference to that year's business as to the premiums written that year, whether he figures only the premiums written that year or the 15 per cent.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. That is right, isn't it?

A. My answer there that we figured the earned premiums on all policies earned during that year—that was my answer there.

Q. Well, that is not the question I asked you. We will get to the premiums that may have been earned during that year. We are now discussing a specified period of five years, aren't we, from '17 to '21, inclusive?

A. Yes.

Q. Now, your figure for each year's business, as far as the premiums received or premiums written, as you call it, [fol. 1289] on that year, just the earned portion or 15 per cent?

A. If you are considering that at the end of each year, yes.

Q. What expenses do you charge for that year?

A. The actual expenses incurred.

Q. Which means the expenses of doing the entire business for that year?

A. Whatever business has been done, yes.

Q. If you paid—did a million dollars' worth of business that year, you would figure as earned premiums 15 per cent of that and charge as premiums—charge all the commissions, 25 per cent?

A. Yes.

Q. Your commissions alone would exceed the amount of your earned premiums that year?

A. Yes.

Q. You would charge every other known expense?

A. Absolutely.

Q. So that you would charge for that year the expense of doing the million dollars' worth of business, but you would only consider the earned part of the premium, or 15 per cent of the million dollars, wouldn't you?

A. Right.

Q. Now, that would happen again the following year, wouldn't it?

A. No.

Q. Wouldn't you repeat the process the following year?

A. You would repeat the process if you took it on a single year, yes.

Q. There wouldn't be any more earned premiums on the year's business?

A. There would be on the two years. And you must—you are on the second year then, you know.

[fol. 1290] Q. But they use the method you have just described?

A. Yes.

Q. Well, you think that method—if that method were used, does it receive your approval as an insurance accountant?

A. It is approximately correct. It would arrive at an approximately correct figure.

Q. Now, we are investigating here a period of five years, beginning with the first of 1917 and going through '21. Mr.

Froggatt, isn't it a fact that at the end of your five year period—I am not talking about an indefinite—understand me—about an indefinite period of insurance business. I am talking about a definite five year period under investigation; for the purpose of rate making. Now, isn't it a fact that at the end of that five year period, too great a proportion of expense has been charged as against the premiums earned during that period?

A. No.

Q. You don't think so?

A. They have been actually paid.

Q. They have been actually paid, but at the end of a specific five year period all the premiums have not been earned that have been written in that period?

A. No; nor all losses have not been incurred.

Q. I understand that, but the premiums have not been earned, have they?

A. No.

Q. Some have been and some have not?

A. Yes.

Q. But every year, although there is only an average of 15 per cent on a particular year's writings, all the expenses of that entire year for the entire business has been charged—each of the five years?

A. Yes.

[fol. 1291] Q. Now, if your insurance went along indefinitely, that ultimately would wash out, wouldn't it?

A. Yes.

Q. When you finally concluded your business and closed your office?

A. Yes.

Q. But for a specific five year period, the end of which does not mark the end of your business, but you are just carrying on your insurance business, at the end of the specific five year period you have charged too great an expense for the premiums you have considered in arriving at your figures, haven't you?

A. No, I don't think so.

Q. Well, you have charged the expense of doing all the business?

A. Yes.

Q. But you have only credited part of the premiums?

A. But you have paid it.

Q. Paid the expense?

A. Yes.

Q. Surely, but you have paid it in advance?

A. Yes, but you have paid it.

Q. But in advance, haven't you? The agent has got a 25 per cent commission on a term policy of five years, hasn't he?

A. Yes.

Q. Now, you charge that full amount that year?

A. Charge everything that you have paid.

Q. But you charge that full amount of 25 per cent?

A Yes.

Q. Then you would say "well, in five years that will wash out because the premium will all be earned, in five years, that five year premium will all be earned?"

A. Yes, all earned in five years.

[fol. 1292] Q. Do you know whether, as a matter of fact, that method of calculation is used in arriving at the earned premiums in getting up state reports?

A. I don't know. I haven't examined any state reports.

Q. Well, if it is, Mr. Froggatt——

Mr. Folonie (interrupting): You might define "state reports."

Mr. Jacobs: I mean the various reports made to the State of Missouri.

Mr. Folonie: That is not what he means. He means what the insurance department prints and passes out to the public.

The Witness: There is a tax report separate from the annual statement.

Mr. Jacobs: There are three reports.

A. Well, I haven't anything to do with those. But your question was what?

Q. If it is a fact that that method of calculation, in order to arrive at an earned premium, is used and there is an increasing or an ascending scale of business—if there is an increasing or an ascending scale of business, the effect of it is to apparently make the premiums less than they really are, isn't it?

A. I don't think so.

Q. Well, now, you add, you say, at the beginning of the year the outstanding unearned premiums, don't you, to arrive at the earned premiums for that year?

A. You take the premiums written during the year and add the outstanding at the end of the year and deduct the outstanding at the beginning of the year.

[fol. 1293] Q. Now, is that your idea of arriving at an earned premium and do you regard that as the proper method?

A. That is one method of arriving at it.

Q. This is the method you stated was suggested by the insurance commissioners, didn't you, or departments?

A. No.

Q. Didn't you testify to that?

A. No.

Q. Where did you get this method you have just mentioned?

A. It is a method generally used by companies.

Q. Your idea of the method is you arrive at the earned premiums for a year, you deduct the outstanding unearned premiums at the first of the year—of that year—take 1922, for example——

A. Yes.

Q. (Continuing:) The outstanding and unearned premiums, you deduct them as they stood at the first of the year?

A. Yes.

Q. And you add the outstanding unearned premiums of the end of the year?

A. Yes.

Q. Now, is that your idea of it?

A. Yes. I say that is one method.

Q. Now, is that a correct method?

A. Mathematically speaking, if you want to get the earned premiums you would have to figure them on individual policies.

Q. That is what you spoke of this morning when the court asked you if you could go to the books and figure them?

A. Yes.

Q. But they don't do it that way?

A. They do not.

[fol. 1294] Q. But they use the method you have just described?

A. Yes.

Q. Well, you think that method—if that method were used, does it receive your approval as an insurance accountant?

A. It is approximately correct. It would arrive at an approximately correct figure.

Q. Now, we are investigating here a period of five years, beginning with the first of 1917 and going through '21. Mr. Froggatt, isn't it a fact that at the end of your five year period—I am not talking about an indefinite—understand me—about an indefinite period of insurance business. I am talking about a definite five year period under investigation; for the purpose of rate making. Now, isn't it a fact that at the end of that five year period, too great a proportion of expense has been charged as against the premiums earned during that period?

A. No.

Q. You don't think so?

A. They have been actually paid.

Q. They have been actually paid, but at the end of a specific five year period all the premiums have not been earned that have been written in that period?

A. No; nor all losses have not been incurred.

Q. I understand that, but the premiums have not been earned, have they?

A. No.

Q. Some have been and some have not?

A. Yes.

Q. But every year, although there is only an average of 15 per cent on a particular year's writings, all the expenses of that entire year for the entire business has been charged—each of the five years?

A. Yes.

[fol. 1295] Q. Now, if your insurance went along indefinitely, that ultimately would wash out, wouldn't it?

A. Yes.

Q. When you finally concluded your business and closed your office?

A. Yes.

Q. But for a specific five year period, the end of which does not mark the end of your business, but you are just carrying on your insurance business, at the end of the specific five year period you have charged too great an expense for the premiums you have considered in arriving at your figures, haven't you?

A. No, I don't think so.

Q. Well, you have charged the expense of doing all the business?

A. Yes.

Q. But you have only credited part of the premiums?

A. But you have paid it.

Q. Paid the expense?

A. Yes.

Q. Surely, but you have paid it in advance?

A. Yes, but you have paid it.

Q. But in advance, haven't you? The agent has got a 25 per cent commission on a term policy of five years, hasn't he?

A. Yes.

Q. Now, you charge that full amount that year?

A. Charge everything that you have paid.

Q. But you charge that full amount of 25 per cent?

A. Yes.

Q. Then you would say "well, in five years that will wash out because the premium will all be earned, in five years, that five year premium will all be earned"?

A. Yes, all earned in five years.

[fol. 1286] Q. But the next year you do the same thing, don't you?

A. Not on that policy.

Q. No, but you do charge the full expense for other different term policies, two, three or five years, for the following year?

A. For any policies written in the following year.

Q. Yes. Now, at the end of your five year period, you doing a continuing business, you have charged too much expense for the premiums, under your earned premium theory, for the premiums you have considered, haven't you?

A. No, I don't think so. You have only charged the expense which you have actually incurred. You have no way of getting that back; and paid.

Q. But you have paid five years in advance in some instances, haven't you?

Mr. Folonie: We object to assuming that the acquisition paid to the agent is a payment in advance. It is payment for securing the policy and his service is complete when he writes it and he gets his commission, and the company can't get it back. We object to the assumption the commission can be prorated over any period.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel than and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. That commission you pay the agent is paid to him for the full five year term, isn't it?

A. He gets the commission for writing that particular policy.

[fol. 1297] Q. And if it is a five year policy he gets a commission on a five year premium, doesn't he?

A. Absolutely.

Q. Well, now, with this process being repeated in each of the five years, then at the end of a specific five year period you have paid out all the expenses of doing all your business for that five years, haven't you?

A. If they were all five year policies.

Q. I am not talking about incurred losses; I am talking about expenses.

A. If they were all five year policies written in those five years, you have paid out the commission for turning over those policies to the company.

Q. What is the difference with a five year policy or a three year policy?

A. Not a bit of difference.

Q. Or a one year policy?

A. Not a bit.

Q. You have paid it all, haven't you?

A. Certainly.

Q. For that five years you have paid every dollar of commissions?

A. That is right.

Q. But in figuring your underwriting experience in the state you haven't by any means considered all the premiums received for which all that money was paid out, have you?

A. Considered your premiums earned.

Q. Only. That is all, too, isn't it?

A. That is all.

Q. And outside of the accumulated earnings from time to time.

A. That is right.

Q. You only consider 15 per cent of your writings each year as earnings, don't you, roughly speaking, on an average?

A. No, that is not right.

[fol. 1298] Q. That is not right?

A. No.

Q. Well, maybe we don't understand one another, but I think you have said so before.

Mr. Leahy: Mr. Froggatt, as a matter of fact, the premium due, as soon as the policy is written, no matter what the term of the policy, is it not?

The Witness: Yes.

Mr. Jacobs:

Q. That doesn't make any difference with reference to calculating upon an earned premium basis, does it?

A. As to when it is due?

Q. Yes.

A. No.

Q. Because you get the money.

A. Sure.

Q. But you say it is your money—the company's money?

A. Company's money, in trust.

Q. You say it is the company's money in trust?

A. Yes.

Q. But at any rate, it is in the possession of the company.

A. Yes.

Q. But you only figure on each year's separate writings 15 per cent of it as earned premium?

A. On each year's separate writings.

Q. Yes, sir.

A. Yes.

Q. Now, you say that during that period there are some premiums which become due and become earned, I mean—I don't mean become due, I mean become earned, from time to time?

A. Yes.

Q. Now, in the years in which those policies were written the company paid a full expense, didn't it?

A. It did.

[fol. 1299] Q. And that is behind you and been charged and paid?

A. Yes.

Q. That 25 per cent and all other expenses—that's right, isn't it?

A. That is right.

Q. So that at the end of your five year period you are in this situation, aren't you: You have had a continuing insurance business, you have been writing term policies and year policies, policies ranging from a few minutes up until five years, say during that five year period. You have never figured without a percentage of the premiums received in any year during that entire five year, have you?

A. In arriving at an underwriting experience in the entire five years, why you figure all of the earned premiums on the first year's policies that you wrote. The second year, why, you have got a larger proportion; the third year a little more, and so forth. So that the first five year policies have all been earned and figured in as earned premiums.

Q. And as you wrote them you paid the full expense each year, didn't you?

A. Absolutely.

Q. Yes. So that at the end of that five year period you have paid all expenses up until the moment your are making your calculations?

A. That is right.

Q. But you haven't by any means in arriving at an underwriting experience figured either—figured all the premiums you have received, have you?

A. Not all the premiums we have received, no.

Q. Because you are bound to have a tremendous part of it as unearned premium.

A. Because it has not been earned and may be payable back to the assured.

[fol. 1300] Q. Certainly. So the net result of using earned premiums as the basis of your underwriting calculations, you consider a part of the premiums received, but charge all the expenses of every kind paid to do the entire business?

A. You have to pay those expenses. They have been paid, and you can't get them back again; so that is the expense of the business.

Q. I understand; but if you are going to figure a part of the premiums, why don't you make a corresponding reduction in the expense you are charging in arriving at an underwriting experience?

A. Why should you? You might be called upon to pay all of that unearned premium back again in full. You wouldn't get any expense back again.

Q. So you offset a certainty by the possibility that you would have to pay all that unearned premium back?

A. That policy—the possibility is a state law.

Q. That is not a state law, that you may have to pay it back on cancellations?

A. It is, absolutely. It is written in the policy contract.

Q. Yes, but you have said yourself that it is not a practical matter.

A. I have said that I have not known of everybody coming in and getting their policy cancelled, but they may do so and must receive the unearned premium if they do it.

Q. But you have never known of such a situation to arise?

A. But it may arise.

Q. Have you?

A. I haven't known of any such situation, but that may arise, and you are compelled to put up your reserve for it.

[fol. 1301] Q. I understand; but the question of maintaining a reserve—you know——

Mr. Folonie (interrupting): Object to that as self-serving statement, the statement as to what he knows, if the Court please.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. I understand about your reserve you are required to keep, but that has nothing to do with your method of calculation to reach an underwriting experience, has it?

A. Yes.

Q. The fact that you keep an unearned premium reserve does not have anything to do with your method you use in arriving at an underwriting experience, has it?

A. Why, we have been describing here the method of arriving at it and talking about it. The actual fact that we keep a reserve wouldn't interfere with my arriving at an earned premium, no.

Q. That's what I mean. So the law requiring you to keep a certain reserve hasn't anything to do with your method of calculation?

A. Oh, yes. If there wasn't any law we would not keep any unearned premium reserve at all.

Q. What would you do with it?

A. Why, do as we pleased.

Q. What do you mean by that?

A. Might not be compelled to pay back the premium.

[fol. 1302] Q. But you say it is in your contracts.

A. I said if we were not compelled to do it, there are such things as not having a cancellation clause in a policy—not in fire insurance.

Q. You mean if you would change your policy and contract there might arise a different situation?

A. Yes.

Q. But to get back to what we were discussing, Mr. Froggatt, at the end of your five year period you have charged all the expenses in arriving at an underwriting experience?

A. That is right.

Q. But you have only considered part of the premiums written?

A. The earned portion of the premiums.

Q. Yes; and that is all.

A. That is all.

Q. What do you mean by an "incurred loss" and how do you arrive at it, or what method do you use to arrive at incurred losses?

A. Well, there are two methods.

"Q. One is that you just sit down and take each separate policy?

A. Yes; take each loss which has been paid during the year and deduct those that were outstanding—take the losses paid during the year and deduct the outstanding at the end of the previous year and add the outstanding at the end of the year, under consideration.

The Referee: Pardon me a moment. Do you consider the 25 per cent or 25 cents paid as commission as part of the earned premium or unearned premium?

[fol. 1303] A. The premium gross, $100 is used in arriving at the unearned premium. $50 is, on a one year policy, carried as unearned. The other $50 must be considered as earned.

The Referee: Well, do you consider the 25 cents paid the agent as earned or unearned premium?

A. Don't consider it at all, specifically.

The Referee: If the premium amounts to $100 the agent retains $25 as his commission. That is done instanter in the event the assured remits at once, and the agent pays at once, he has $25?

A. Yes.

The Referee: That leave $75. At an average of 15 per cent, getting into the unearned premium fund—into the earned premium fund, yearly, in five years that consumes $75?

A. Yes.

The Referee: Well, now, then, when is the $25 of the gross premium considered as earned, if at all?

A. At the end of the first year; $50 is considered earned and $50 unearned on every annual policy. No attention is paid to the commission matter. That is a matter of expense which does not enter into the calculation of reserve.

The Referee: Consider as to the reserve fund only the $75?

A. The $100.

Mr. Folonie: Do you calculate the agent's commission against earned premiums or against unearned premiums or against general assets of the company?

[fol. 1304] A. Calculate them? What do you mean by "calculate them?"

Mr. Folonie: What do you pay them out of?

A. Out of the general assets of the company.

The Referee: In point of actual fact, they are paid out of the money which the assured hands over to the agent when he gets his policy?

A. Yes, but you must understand when the reports of the agents get into the company's hands, those items are all treated in a proper manner as to premiums and expenses, regardless of the net item that may be remitted.

The Referee: Well, I think I understand that. You charge $100 and credit $25?

A. That is it, yes. One is premium and the other is expense.

The Referee: Very well. Now, let's see if I can make my meaning clear. Assume a five year policy on which the premium is $100. I have understood you to say that 15 per cent of that premium is counted as earned premium annually. In the five years that would make $75. Now, then, what is the $25 remaining necessary to make up the $100—what is it? Is it earned premium or unearned premium or no part of the premium?

A. I can't answer that. I don't understand it.

The Referee: Well, what is the premium on a five year policy in the assumption it is $100——

A. (Interrupting.) You are confusing unearned premium reserve with income and disbursement items of the company and they are entirely separate.

[fol. 1305] The Referee: It is just that confusion I am trying to clear up.

A. The reserve is merely a bookkeeping entry to try to arrive at the unearned premium liability which the state insists the company should carry.

The Referee: Well, in making up your underwriting experience on the basis supposed, do you take that $25 into consideration at all, as premium?

A. We take the gross premium written, $100.

The Referee: Now, when do you consider that $25 becomes earned?

A. Whenever it is earned; at the end of the year 50 per cent of that $100 will be earned.

The Referee: On a five year policy?

A. No. On a five year policy it is different.

The Referee: Let's stick to the five year policy.

A. Well, there is only one-tenth on the first year earned; nine-tenths unearned.

By Mr. Folonie:

Q. $10 earned, then, out of a $100 premium?

A. Yes.

Q. How can you pay $25 commission out of $10 when that is all you have gotten? You have only earned $10?

A. I said it is a premium calculation and has nothing to do with the actual money transaction.

The Referee: I still don't think I have made my meaning clear, if I have any, and I think I have. It is this: Do you divide your total premium into two classes, earned and unearned—that is correct, is it not?

A. No, don't divide them at all on the books of the company.

[fol. 1306] The Referee: I understand, but we have been discussing them on that basis.

A. Yes. All right.

The Referee: Now, for the purpose of this discussion, you divide premiums into two classes, earned and unearned?

A. Yes.

The Referee: Now, then, you have stated, as I understand, that $15 out of each $100 on a five year policy becomes earned in the course of each year. Am I correct on that?

A. No.

The Referee: Then I have misunderstood you.

A. It is only the average of one year, two years, three years, four years or five year policies over a period of five years that makes this average of 85 per cent. The first year of a company's business—the average unearned premium—and premium writings wouldn't be much over 60 per cent, dependent upon the type of policy written.

The Referee: Yes. Well, now, let me get a specific instance. Assuming a five year policy with a $100 premium—and bear in mind the distinction made between earned and unearned premium—what part of that $100 do you count as earned premium at the expiration of the first year?

A. $10.

The Referee: And the second year?

A. $25—I am not sure.

The Referee: How much?

[fol. 1307] A. I think 25. I haven't got the table here. I couldn't tell you offhand.

The Referee: Does that $25 include the $10 earned the first year?

A. No, inclusive. $25 would be considered earned on that policy.

The Referee: That $25 includes, then, the $10 earned the first year?

A. Yes.

The Referee: Then you have a total of $25 for the two years?

A. Yes.

Q. How much for the third?

A. I think 50 per cent.

The Referee: At the end of the third year you have $50 earned premium?

A. Yes.

The Referee: At the end of the fourth year, how much?

A. $75 per cent.

The Referee: $75.

A. Yes; and the entire at the end of the five.

The Referee: Very good. Then the $25 which the agent receives as his commission you count as earned premium over a period of five years, or at the rate of $15 per year, is that it?

A. That is it.

The Referee: That is all. Take a recess for ten minutes now.

(Which was accordingly done.)

[fol. 1308] Cross-examination (resumed) by Mr. Jacobs:

Q. I believe you stated a while ago, Mr. Froggatt, in reply to a question by the court, that on your books, taking the classic illustration of the $100 premium, that on your books it was carried as $25 expense and $75 premium.

A. $100 premium.

Q. Well, didn't you testify a little while ago in answer to the court's question that it was carried on the books $25 expense and $75 premium?

A. No, sir.

Q. Did I misunderstand you on that?

A. I think you did, sir.

Q. Now, on your last five years of business—last year of your five year period—you charged as in all other years the full expense of operation?

A. Yes, sir.

Q. That includes every known expense chargeable properly?

A. Yes, sir.

Q. Against the state, in arriving at an underwriting experience?

A. That is right.

Q. Now, you write policies in that year, don't you? Maybe one, two, three, four or five year policies?

A. Yes, sir.

Q. And they will average, you say, in a year—any policies written that year, will average $10 for earned premium?

A. Written in that particular year, if you hadn't written any others?

Q. No, I mean the policies that are written in the last year of that five year period in that one year.

A. They will average about 60 per cent.

[fol. 1369] Q. I don't think you understand me. I know you don't mean that. The policies that are written in that year, within that year.

A. Written, we will say, 1922.

Q. '21.

A. All right.

Q. And the court asked you, in one year, or the first year, namely, the year in which the policy was written, about how much of it would be earned premium; and you said $10.

A. On a five year policy.

Q. And 15 on the next year?

A. Yes.

Q. Making 25.

A. Yes. On a five year policy. Yes, that is right.

Q. So you charge part—a large part of your business in your last year is only earned premium to the extent you suggested to the court when he questioned you a little while ago?

A. On the five year policies that is true.

Q. Or the three year policy?

A. Yes.

Q. Or a two year policy—anything over a year would only be partly earned in the first year?

A. Quite right.

Q. Now, you have paid all expenses, however, complete for that year?

A. Exactly.

Q. Now, do you think, Mr. Froggatt, that you are arriving at a just figure in using your method of calculation for the purpose of rate making—with that in mind?

A. If you are going to make rates on the basis of underwriting profits, I think my method is right.

Q. You think it is right to charge all of the expense and only consider part of the receipts?

A. I do, because that expense has actually been paid.

[fol. 1310] Q. That is true, it has, and you have got all the receipts in your possession.

A. Yes.

Q. And you take the earnings on them, you say—the companies take the earnings on them?

A. Yes.

Q. The unearned portion of it?

A. Yes, that is true.

Q. You think that is right?

A. I do.

Q. And you think it right—as a matter of fact, you have got the money in your possession?

A. That is, except the proportion that has not been collected.

Q. And that is on a 60 or 90 day basis?

A. Yes.

Q. And that is really an arrangement between the agent and the company, and the state has nothing to do with that, has it?

A. No.

Q. You could say to your agent, "When you deliver this policy get the money," couldn't you?

A. Yes, you could, but you wouldn't be in business very long.

Q. Well, don't the companies do a cash basis, at least in part?

A. I don't believe so.

Q. Isn't it a fact that some of the companies refuse, say the farmers, credit at all, on a policy?

A. I don't know of any.

Q. Aren't there some companies which exact a bankable note from the farmers, say when they deliver the policy?

A. I think there is some farm business written on notes, yes.

Q. Aren't there some companies who do a credit business on bankable notes in the country but which exact a cash payment in the city or town upon the delivery of the policy?

A. I don't know.

[fol. 1311] Q. You wouldn't say there aren't any, would you?

A. I would not say there were.

Q. At any rate, then, the arrangement, whatever it may be, that is merely an operating method between the agents and the company?

A. Absolutely.

Q. And with which the state has no connection whatever?

A. That is right.

Q. So, broadly speaking, you get the money for your policies?

A. Eventually.

Q. Eventually. And a very, very small percentage of the money goes over 90 days, doesn't it?

A. A small proportion over 90 days. I don't know what the percentage, but it is small over 90 days.

Q. How do you justify, Mr. Froggatt, a method whereby you collect the money, and as you say your are entitled to the use of it and to its earnings, and you only consider a small part of it in arriving at a result, but charge the entire expense, when you know that at least on part of the period under consideration the expenses will greatly exceed the amount of the premiums which you actually consider in your calculations?

A. Because we have actually paid out those expenses.

Q. Now, that is your only reason?

A. That is a proper reason.

Q. And that is the only one you have?

A. That is the only thing we have to consider.

Q. Now, you make the arrangement with the agent whereby he retains this commission before the premium is entirely earned?

A. That is the general policy—custom.

[fol. 1312] Q. Yes. Now, do you think that that is a correct result you reach?

A. Yes.

Q. It it was a mercantile business, the stuff that had been bought on which you charge an expense would be there, either in the nature of money for which it had been sold, receipts of the business in other words, or it would be represented by the stock on hand, wouldn't it, in arriving at a result at the end of a year's business?

A. I presume so, yes.

Q. Assuming that it was properly and correctly carried on in good faith. But in the insurance business you believe it is a proper method of calculation, applying the situation to an underwriting experience, that for purposes of these calculations you wipe out completely a large part of your receipts?

A. No. You haven't received it.

Q. You have received it, haven't you?

A. Haven't earned it, then.

Q. Haven't earned it, but you have got it?

A. Yes, but it is subject to return.

Q. Yes, sir. And you charge the full amount against that year's business?

A. Because we paid, yes.

Q. For not only the part that is earned but for all the rest of it?

A. Yes, that has been the expense of it.

Q. That is the agency commission, isn't it?

A. Yes, part of it.

Q. Then you have got your officers, who are working for the company?

A. Yes.

[fol. 1313] Q. They collect their money in handling the full amount?

A. Exactly.

Q. And all your other manifold expenses are included completely?

A. Absolutely.

Q. And you say that in your judgment that is a fair and just method of calculating an underwriting experience?

A. I do.

Q. Now, do you feel, further, Mr. Froggatt—you say that you have in your actual possession the unearned premium? I mean at least at the end of the 90 days you have that, haven't you? The company has got it?

A. The company has got it, less the expense.

Q. Less the expense. You mean by that the agency commission?

A. Yes.

Q. The other expenses may or may not transpire till the end of the year, that is true, isn't it?

A. They are transpiring during the year.

Q. You have got all this money in your possession. You denominated it a trust fund a while ago, didn't you?

A. Yes.

Q. That money earns money, doesn't it?

A. It should.

Q. And it does, as a matter of fact, doesn't it?

A. Yes, it does.

Q. The truth of the matter is that the gross earnings of the fire companies—the previous earnings of the fire companies come from the premium reserve, don't they?

A. They come from the premiums which have been collected, but which have been put in the assets of the company, of course; that is the source of income.

[fol. 1314] Q. And now you make investments with your surplus, don't you?

A. We do.

Q. Do you make investments along the line of stocks and bonds and the other things that have been enumerated here with the unearned premium reserve?

A. Just with all the funds that come into the hands of the company, whether unearned premium reserve or otherwise.

Q. So the reserve earns money?

A. Certainly.

Q. Who do you think that money belongs to?

Mr. Hogsett: Object to that as calling for a legal opinion of the witness.

Mr. Jacobs:

Q. To whom do you credit those earnings?
A. Credit them to investment account.
Q. And that belongs to whom?
A. The company.
Q. Not to the policyholders, does it?
A. Nothing to do with the policyholder.
Q. Belongs to the company?
A. Yes.
Q. Do you feel that the policyholders have anything to do or any right in those earnings?
A. No.
Q. Do you feel they have any right in this unearned premium reserve?
A. Yes.
Q. What is their right in it?
A. Unearned portion of the premiums if they elected to cancel their policy.
Q. Do you feel the company is holding that in trust in the event the policyholder makes up his mind to cancel?
A. They might do so under the state law.
Q. So they have an interest in it?
A. They have an unearned premium interest in it, yes; [fol. 1315] according to the policy contract.
Q. But in spite of their interest in it you say that their earnings belong to the company?
A. Yes.
Q. Do you think that the company should pay the expense of the operations which produce those earnings?
A. The company pays all expenses of running its business, whether investment account or otherwise.
Q. You are sure of that?
A. I haven't known any company to get anybody outside to come in and pay it.
Q. Well, now, let's see about that. You think that is right, don't you?
A. I do.

Q. In every one of these annual reports which are made to the State of Missouri, as an example, there are allocated expenses which are figured in making the rate in the State of Missouri, and these allocated expenses include all the expenses of these investment and banking operations. Now, if that is a fact, Mr. Froggatt, a proportionate part of the expense of banking operations and investment operations is charged against the policyholders of the State of Missouri, isn't it?

A. If what you say is true.

Q. If what I say is true?

A. Yes.

Q. Do you think that is fair?

A. I don't know that you are right.

Q. Assuming that I am right, do you think it is fair?

A. Why, I can't answer that question, because I don't quite understand what it is or what it means.

[fol. 1316] Q. It is so remarkable that it is difficult to understand?

A. I presume that is so. Well, I don't quite understand what it is.

Q. Well, now, just what about it is it that you don't understand?

A. You say that all the expenses of the company, whether on the investment end of it or the underwriting end of it, are all charged in arriving at a rate, charged to the policyholders in Missouri?

Q. A proportionate part. And I am asking you to assume that that is true. Do you think that is fair?

A. No.

Q. Very well. Now, Mr. Froggatt, you believe that there should be some allowance for a conflagration hazard?

A. Allowance to whom?

Q. To the company, in making a rate. In a question of arriving at profit or loss?

A. Yes.

Q. You believe that?

A. Yes.

Q. And so stated this morning?

A. Yes.

Q. As I understood, the reason you gave was that there was always the danger of a conflagration which might

wipe out surplus and reserve and capital and might operate to destroy a company?

A. That is right.

Q. So you feel that it is something that ought to be taken care of in arriving at a rate?

A. I do.

Q. Now, Mr. Froggatt, if as a matter of fact, the companies, when a conflagration transpires like the Frisco fire, placed an increase of from 10 to 15 per cent upon their premiums, to be paid by their policyholders, to stand the [fol. 1317] losses of a conflagration, assuming that that is a fact, do you still say that there should be a consideration of conflagration hazard in arriving at a rate?

A. I do.

Q. You still think so?

A. Yes.

Q. All right. Now, you testified this morning, according to your figures, that there was about a 6 per cent impairment on account of conflagration losses in this country?

A. A six per cent loss to premium writing.

Q. To premium writing?

A. Yes; premium writings.

Q. What do you mean by "premium writings"?

A. I mean the premiums written.

Q. And you mean that the business fell off to that extent?

A. Oh, no.

Q. Or do you mean that constituted a reduction of 6 per cent on your surplus and reserve?

A. No, I mean conflagration losses are 6 per cent of the premium writings.

Q. Does that mean 6 per cent of the volume of business?

A. Yes.

Q. Now, if, after the San Francisco fire, there was an increase of 15 per cent on the premium writing, it was more than taken care of—this 6 per cent about which you talk, wasn't it?

A. Oh, it was only on the San Francisco premiums and not on the total premiums.

Q. You mean to say that the 15 per cent was only placed upon the California or the Frisco premiums?

A. That is as I understand it, yes. Isn't that what you said?

[fol. 1318] Q. No. Do you understand that there was no general increase over the country?

A. I don't know whether there was or not.

Q. Well, now, if there was—assume for the moment that there was such an increase——

Mr. Folonie (interrupting): We object, because that obviously would depend on how long the increase was, the increase was in existence, and would depend on whether the rates as pre-existing were productive of a profit or loss. So many different elements of it in there, we respectfully submit an answer could only be misleading.

The Referee: I think the witness can differentiate. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Assuming, Mr. Froggatt, that there was a general increase of, say, 15 per cent over the country—that would be on volume of business, wouldn't it—following this conflagration—whatever it was—then it was taken care of in that way, wasn't it?

A. It would be greater than 6 per cent if it was held long enough to take care of the total amount of losses.

Q. Now, have you any idea whether or not, first, there was a 15 per cent country wide increase?

A. I haven't, no.

Q. Or how long it prevailed, if there was?

A. I don't know.

[fol. 1319] Q. You haven't informed yourself on that matter?

A. I have not, sir.

Q. But this is a fact, isn't it, Mr. Froggatt: That if the increase was placed on the premium writings of the country generally of 15 per cent that the conflagration losses, instead of being borne by the stockholders of the fire companies, were borne by the policyholders of the fire companies, generally, wasn't it, at least to the extent of the payment of the increase?

A. That is quite right.

Q. That is true, isn't it?

A. That is true.

Q. Now, if it is a fact that that is the way conflagration losses are met by the stock fire companies, do you still think that there should be or ought to be an allowance for conflagration hazard in arriving at rates?

A. I think it would be a better method.

Q. You don't mean both of them should be used?

A. No, sir. I mean it would be a better method to have some allowance made and take care of it in that way rather than to wait until after it has occurred, because of the fact that so many companies are put out of business by conflagrations and there is a great deal of suffering and disturbance of business; while, if there was a conflagration fund provided in advance from which those conflagration losses would be met, I think it would be better for business generally.

Q. Well, if, as a matter of fact, they used the other method, do you still think that the conflagration hazard should figure in arriving at a rate?

[fol. 1320] Mr. Hogsett: We object to that, for this reason: That we think it is a sufficient and complete reason that the statute of Missouri expressly provides that in passing on a matter of reducing rates the Superintendent of Insurance shall give proper consideration to the conflagration liability, both within and without the state. That being the case, the law makers having enjoined that duty on the Superintendent, it is wholly immaterial what this witness or any other witness thinks about it.

The Referee: This is cross examination of a gentleman who is within certain limits an expert. I think it may be answered. Overruled.

(To which action and ruling of the Referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, read the question, Mr. Blume.

(Question read by the reporter.)

Mr. Jacobs:

Q. I say, if as a matter of fact the other method about which we have been talking is used and has been used, namely an increase in rates to be paid by the policyholders, do you think that in addition to that the conflagration hazard should still be considered in arriving at a rate?

A. If the conflagrations of the past have been absolutely covered by the increases in rates which have been made so the companies have been entirely reimbursed, and such increases have been reflected in the rates charged, why, then as a matter of fact the experience of the companies includes an experience after the conflagration expense has been taken care of. If what you say is true.

[fol. 1321] Q. And by that you mean, then, that you should not consider conflagration hazard in arriving at a rate?

A. If this loss, 6.96 per cent, has been actually covered in increased rates throughout the country, why, then we have had the experience with the conflagration issue in it.

Q. Well, but you don't answer my question. If that has been done and if that is the method used do you still think they ought to figure an arbitrary conflagration hazard in arriving at rates in the various states?

A. Yes, I think they ought to provide for it.

Q. Still think they ought to do that, in addition to the other?

A. I do.

Q. Have both things. First have your rate based upon conflagration hazard and then use the method of increasing rates upon the policyholders in the event of conflagrations. You believe both things should be done?

A. You are putting the question a little differently now.

Q. That is what I am trying to get at. Would you use them both?

A. Not if one has actually covered the situation; but, as I said before, I think that a conflagration fund should be provided in the rates, to meet future conflagrations.

Q. Do you know whether a three per cent conflagration hazard in arriving at a rate would fully meet the situation and cover all losses, according to the figures that——

A. (Interrupting.) According to the figures that I produced, it would not.

Q. All right. You have the same situation with reference to that that you have if we presume that your increase of 15 per cent did not cover the losses before, haven't you?

A. We have about the same situation.

[fol. 1322] Q. Now, what—would you be favorable to using one or the other, or would you be favorable to using them both?

A. I should be inclined to consider that a rate ought to include provision for conflagrations.

Q. And then abandon all idea of increasing rates in the event of a conflagration, to be paid by the policy-holders to meet any such loss?

A. Yes, the conflagration would be taken care of in a separate fund provided for in the rate.

Q. Do you keep, as a matter of fact, a conflagration reserve, earmarked?

A. I don't think there is such a thing kept.

Q. Now, what are incurred losses?

A. Losses which were actually incurred between a certain period.

Q. How do you arrive at them, beyond going to your books and taking each policy and figuring the loss on it?

A. Taking the paid losses, deducting the outstanding losses at the beginning of the year, and adding the outstanding losses at the end of the year.

Q. It is the same, does the same hold true, of the incurred expenses, same method of calculation?

A. Yes.

Q. Does the same method hold true of earnings?

A. Yes.

Q. You are sure?

A. Yes.

Q. Now, what happens, Mr. Froggatt, with reference to incurred losses on an ascending scale of business? You say that at the beginning of the period you deduct the outstanding losses and at the end of the period you add them?

A. Yes.

[fol. 1323] Q. Now, if you have an ascending scale of business you have an ascending scale of losses, as a practical matter of insurance experience, haven't you?

A. It would be quite likely to be so, although you might not have.

Q. There is a possibility of your not having?

A. Oh, yes.

Q. But it is a matter of insurance experience that with increasing business you have increasing losses?

A. Yes; oh, yes.

Q. So by using your method of incurred losses in arriving at an underwriting experience, you arrive at your figure of incurred losses by deducting the smaller losses at the beginning of the period and adding the greater amount of losses at the end of the period don't you?

A. You do.

Q. On an ascending scale of business?

A. Yes.

Q. Well, do you think that the prospective policyholder who pays a rate based upon the calculation of the underwriting experience is receiving a fair deal in that kind of a calculation?

A. It is absolutely correct.

Q. Do you think it is fair?

A. Absolutely correct.

Q. Although it goes over a definite fixed period of time, five years?

A. Doesn't make any difference.

Q. Well, it does make some difference on a fixed period, doesn't it? Because they never can entirely wash out, can they?

A. Yes.

Q. How?

A. You are dealing with actual occurrences between that period.

[fol. 1324] Q. What you are dealing with are losses but not actual occurrences to the extent of paid losses during that period, are you?

A. Actual occurrences what?

Q. Of paid losses. The losses you paid.

A. You will eventually pay the ones outstanding at the end of that period, and therefore they must be considered as incurred.

Q. That is true. You will eventually pay them, but you may not pay them within the five year period, may you?

A. What difference does that make?

Q. Well, doesn't it make just this difference, Mr. Froggatt: That on an ascending scale of business you are taking

off the small amount of outstanding losses at the beginning of the period and adding on the greatly increased outstanding losses at the end of the period?

A. No, I don't think you actually follows that method.

Q. That is the method you gave?

A. Absolutely, but I want to explain as to what it means.

Q. All right.

A. During the year you pay losses. They are made up of losses which were incurred last year and losses which have been incurred this year.

Q. Some of them. Some you paid that have been incurred this year?

A. Yes. You deduct from those losses the ones outstanding at the beginning of the year.

Q. What do you do at the end of the year?

A. Add those that have been incurred, so you get the losses paid within a year which were incurred within the year, plus those which have been incurred which are not yet paid.

[fol. 1325] Q. Yes. So on an ascending scale of business you add the great amount of losses and subtract the small amount of losses?

A. Yes, because that is all you had. That is all you had outstanding of last year's losses.

Q. Certainly. That is why you use this method?

A. Why, certainly. If you arrived at it on the actual basis you would arrive at the same figure.

Q. Would you arrive at the same figure on a descending scale of business?

A. Sure.

Q. At the end of the year you know what you have paid out in losses?

A. Exactly.

Q. Exactly?

A. Yes.

Q. When you arrive at an underwriting experience at the end of the year you could tell this court just exactly how much the company has paid out in the way of losses?

A. Yes; and whether they applied to the last year or this or any other year.

Q. Yes; but instead of that you adopt what at best is a calculation, don't you?

A. No, it is a correct method.

Q. Well, it is a calculation, isn't it?

A. It is a method of arriving at an incurred loss.

Q. It is not a mathematical method whereby you take the policies and say "we paid out so-and-so on that?"

A. Yes, we do.

Q. And every loss which has been estimated as so and so?

A. Yes, just the same thing. You take every loss that is paid and take the actual figure. You have the estimates of those that are outstanding which have been incurred this year and still are outstanding and you deduct those [fol. 1326] that were outstanding at the beginning of the year. That gives you the incurred of this year.

Q. But who gets the worst of that kind of calculation, the policyholder or the company?

Mr. Hogsett: : We object to the form of the question as to "who gets the worst of it."

Mr. Jacobs:

Q. As a matter of accounting.

Mr. Hogsett: Wait a minute. We object for the reason that it calls for a legal conclusion and for the further reason that it now appears to this court that by an Act of Congress the companies are required to calculate their business on this method of incurred losses, earned premiums and incurred expenses, for the purpose of paying income to the Government; and for the further reason that it appears from the reports exacted of the companies by the defendant himself that they are required to make their reports to him on that basis, and it certainly is not proper to ask, in the light of those two facts, "who gets the worst of it." It is not a proper matter of inquiry nor a proper form of the question. The inference in the question is absolutely unfair, when by the law of the land we are required to do that.

Mr. Jacobs: Not for rate-making.

Mr. Leahy: It's like kneeling on a fellow's stomach and thumping him on the head.

Mr. Hogsett: If the Federal Government considers that is a proper method, certainly it does not lie in the mouths

of counsel to say that by following that method we are giving anybody the worst of it, and I object to the form of the question.

[fol. 1327] Mr. Jacobs: There isn't any analogy at all.

(Whereupon discussion ensued, not made a part of the record.)

Mr. Jacobs: I will withdraw that question, and ask you if it is not a fact that by using this method in arriving at an underwriting experience you add on, in an ascending scale of business, a lot more losses that are outstanding than you deduct?

Mr. Leahy: We object to that as calling for a conclusion, Your Honor.

Mr. Jacobs: This witness has qualified as an expert accountant and is put on here for the purpose.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Please answer the question.

A. You might put on more losses or you might not; would depend on the experience of the company.

Q. What do you mean?

A. Just what I say; it would depend on the experience of the company?

Q. I know, but what do you mean by the experience of the company?

A. Might have been very bad experience regarding losses and with an ascending scale of business you might put on a lot more losses. It might have a wonderful experience and might put on less.

Q. But you testified a while ago, didn't you, that as a matter of insurance experience that with the increase in business there came an increase in losses?

A. As a rule that must naturally follow, but it doesn't [fol. 1328] mean that because you add on more losses that that you haven't disclosed the actual incurred losses during the year. That is what you are trying to get at?

Q. I accepted your statement that your method would show the actual and incurred losses; but what I am asking

you about is, does your method of arriving at incurred losses reflect a fair and just account of the year's business from the standpoint of the policy holder or the man whom the rate affects?

A. Oh, yes. It gives you the actual incurred losses.

Q. That is true, but you might figure actually paid losses, might you not?

A. No.

Q. You want to figure incurred losses?

A. Absolutely.

Q. In other words, you want to figure the losses that were incurred in 1921 but which may be paid in 1922, they may be paid in 1923 or they might not be paid at all?

A. It is a debt which we have incurred.

Q. You don't pay all losses that are reported, do you?

A. They adjust themselves from year to year and if you don't, what ever has been paid in this year, any savings effected have been taken care of in this method.

Q. True, but you are operating over a definite, fixed five year period. Say the last year, 1921, you have had an increase in business and this year, just as you have through practically the five year period under inquiry; so we want to arrive at an experience, and underwriting experience, for 1921. You deduct those smaller losses at the beginning of the year and then you add a lot greater losses [fol. 1329] at the end of the year and say to the rate making body, "That is our underwriting experience on which to fix a rate."

A. That is right.

Q. And you figure that is fair?

A. Yes.

Q. To put expenses—about expenses, you operate the same way on them?

A. Yes.

Q. And you arrive at the calculations on the same basis?

A. Yes.

Q. Now, as a matter of fact, you have said you figure earned premiums the same way two or three times, but you do not, do you?

A. Figure earned premiums on the basis of taking total premiums written, adding the unearned, December 31st of the previous year, and deducting the unearned at the

end of the year and getting the earned premiums; same way.

Q. Now, don't you, as a matter of fact, in arriving at an earned premium, add the unearned premiums at the beginning of the year and subtract them at the end of the year?

A. Isn't that what I said?

Q. No, you said the reverse.

A. Oh, well; I beg your pardon.

Q. But I am right on my statement of it, am I not?

A. Yes.

Q. Doesn't that mean on an ascending scale of business that where you subtract the small losses at the beginning of the year you add the smaller premiums at the beginning of the year, and at the end of the year, where you add the enhanced losses in an ascending scale of business, you subtract the enhanced premiums at the same time?

A. That is quite true.

[fol. 1330] Q. Now, you think that is fair?

A. I do.

Q. Eminently just?

A. I do.

Q. All right.

A. I would like to have my testimony corrected if I said the reverse of those earned premiums. It was not so intended.

Q. Yes, it is easy enough to get mixed up, I know. Now, why is it that you say that you wouldn't use premiums received instead of premiums earned, in arriving at an underwriting experience?

A. Because they haven't been earned.

Q. Because they haven't been earned?

A. Yes.

Q. Now, that is your entire and your sole reason for refusing to use that method as an accountant in arriving at the experience of a year's insurance business?

A. In arriving at the underwriting profit or loss.

Q. In arriving at the underwriting profit or loss?

A. Yes.

Q. And what about the incurred loss? You say you wouldn't use losses actually paid in arriving at an experience?

A. No.

Q. Now, why wouldn't you use that?

A. Because the losses which were incurred are the losses which the company has to pay, and which is the experience of that company in that particular period.

Q. But they haven't actually paid them?

A. No, but they will.

Q. Haven't you stressed all the way through this testimony that certain items should be considered, for example the advance payment of commissions to agents, because [fol. 1331] you say "We actually paid it"?

A. Yes. We also consider the items that are unpaid.

Q. Now, in the matter of incurred losses you say that "we must pay it sometime"—not that you know, but that you must sometime, or in part?

A. Certainly.

Q. And so you insist on using that method?

A. Yes.

Q. Although it has not been actually paid?

A. Exactly.

Q. By the same token, why don't you use premiums received? You may not have earned all of them, but neither have you paid all the losses.

A. Because we may have to return those premiums.

Q. You can't say that you are going to actually pay the losses, can you?

A. We are if they can prove liability.

Q. Yes, but they may not prove it, although you have charged them. When you place an estimated loss on your expenses or in your books, I mean, you don't get into the question of liability then, do you?

A. Oh, yes.

Q. Don't you get an estimate from your agent and doesn't that go down as part of your losses?

A. We try to find out whether that estimate is right or not before we put it down.

Q. Suppose you have an agent in the State of Missouri and he says, "So and so's property burned and his estimated loss is $10,000."

A. Yes.

Q. Now, you carry that as an incurred loss on your books until there is some reason for contesting it, don't you?

[fol. 1332] A. Until there is some reason for changing it.

Q. Until there is some reason for changing it?

A. Yes.

Q. Either by reason of absence of liability or because the value was not there or for some other reason?

A. Until it is actually changed for some good reason or other, payment or otherwise.

Q. So you are putting down then losses that you may not pay and counting them incurred losses in the year's business?

A. Not if we know it.

Q. Well, you wouldn't know it until you got into the matter, would you?

A. No.

Q. Takes years sometimes to settle those things, doesn't it?

A. Yes.

Q. And you are carrying them as incurred losses until they are finally disposed of?

A. Yes.

Q. So you don't know whether you are actually going to pay 100 per cent, 75 per cent or some other per cent?

A. We know pretty well.

Q. You don't know you are going to pay 100 per cent, do you?

A. Oh, no.

Q. And you also have no idea that there will be a complete cancellation and calling for refund of all these outstanding unearned premiums, and you know that, don't you?

A. Yes.

Q. So the net result of your method of calculation, as I understand it, is, isn't it, that you add on the big losses and take off the big premiums; you won't consider the unearned [fol. 1333] premiums but you will consider the unpaid losses. Now, that is a fact, isn't it? Isn't that a summary of your method?

A. As you state it, the details have been entirely outlined. If you want to put it in that way, that that is the effect of it, why, all right.

Q. All right.

Mr. Folonie: Let his conscience be his guide, then.

Mr. Leahy: You don't concur in that, do you, Mr. Froggatt?

A. No.

Mr. Jacobs:

Q. Don't concur in what—in my way of stating it?

A. I don't like your way of stating it.

Q. You don't like my method of phrasing it?

A. No.

Q. But my conclusions are right, aren't they?

A. No, not without qualification.

Q. Well, let's see if they are not, since Mr. Leahy suggested this to you. You do take off the enhanced premiums on an ascending scale of business, don't you, in arriving at the earned premium?

A. That is true.

Q. And you do add on the enhanced losses under your method, don't you?

A. If they are enhanced, yes.

Q. If they are, under an ascending scale of business?

A. That is true.

Q. I am right to that extent, am I not?

A. You are right to that extent.

Q. Now, with reference to your losses, you include in each year's business your incurred losses according to that method?

A. Yes.

[fol. 1334] Q. But you can't say to this court that every dollar's worth of incurred losses you put on those books will actually be paid?

A. No, and I can't say that the losses that were deducted last year have been actually paid in the same amount that has been deducted.

Q. You mean that were deducted at the first of the year?

A. Yes. They may have been paid for less amounts.

Q. But not at that time, would they?

A. Not at that time. I mean that during the year they may have been paid for less amounts.

Q. Yes, but that is a smaller amount, isn't it?

A. Oh, yes.

Q. Now, with reference to the premiums, you say that you refuse to consider premiums received because you may have to pay back some of them on cancellations, isn't that right?

A. Yes.

Q. So isn't my statement about it, without expressing an opinion as to the phraseology of it, a correct statement of your testimony?

A. Supposing you took it the other way, when a company's business is decreasing and they had a big outstanding loss and small premiums, then you get less, wouldn't you?

Q. If you asked me, I would say the companies wouldn't use that method.

A. Oh, yes, they would.

Mr. Folonie: We resent impugning the possible action of the companies in such a situation; impugning their motives in the hypothetical situation counsel assumes.

[fol. 1335] Mr. Hogsett: And in the absence of any testimony whatever that any company at any time has ever used any other method. Up to date we have been trying this case now for several weeks and there isn't a suggestion of evidence anywhere that on a descending scale or on an ascending scale that the companies use any other method of calculation whatever, except those contained in the suggestions of counsel.

Mr. Folonie: And Mr. Froggatt says this method is right.

Mr. Jacobs: When we get around to it we will show that counsel for these insurance companies said ours was the proper method. It is in the record.

The Referee: I understand expressions of counsel for plaintiffs to be expressions of their resentment. Take a recess now of ten minutes.

(Which was accordingly done.)

Mr. Jacobs:

Q. Now, Mr. Froggatt, from the standpoint of expense—and I am speaking outside the agency connections—it doesn't cost any more to write a five year policy than it does a one year or less policy, does it?

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A. No, outside of the commissions.

Q. I am speaking now outside of course, of the agency commissions. Your expenses are the same, aren't they?

A. Yes.

Q. Of course, the premium is greater naturally on a five year policy than on a less than five year policy.

A. Yes.

[fol. 1336] Q. So for the same outlay of time, perhaps, or at least expense of operation, a greater return in the case of a term policy is received than on a year or less, isn't it?

A. Yes.

Mr. Folonie: I assume you mean the initial expense?

Mr. Jacobs: I am talking of the expense of carrying on the business.

Q. Now, that is the reason why a five year policy, proportionately speaking, can be sold for less than a one year policy, isn't it?

A. I presume so; and the fact we get money in advance for five years.

Q. And the getting the money in advance and the fact you get a greater amount of money with the same expenditure of money, beyond of course the agency commission, which naturally is regulated by the size of the premium?

A. I presume so.

Q. You figure the experience of your company, broadly speaking, on the combined underwriting and banking and investment business, don't you?

A. You mean the final results obtained through the year?

Q. Yes.

A. You figure them separately and combine them to find out what the total result is.

Q. In other words, you can't arrive at the true result of their experience without figuring them both, can you?

A. No, sir.

Q. Talking about underwriting experience from the standpoint of rate making, have you in your testimony today for the companies assumed that the law of the State of Missouri required that the rates be based upon an under- [fol. 1337] writing experience?

A. No, I haven't assumed anything about the laws of the State of Missouri.

Q. Well, you knew, of course, that this was an inquiry relating to fire rates in the State of Missouri?

A. I did.

Q. And in discussing your methods of calculation and the underwriting experience and how you arrived at it, did you mean to convey to this court that your idea was that was a method of calculation upon which rates should be based?

Mr. Folonie: Rates or premium charges?

A. You mean as to experience?

Mr. Jacobs:

Q. Yes.

A. What I have contended and said right along was that that was the proper method of arriving at underwriting profits. That is, if it is underwriting profit on the business of Missouri or of any other state.

Q. Well, do you figure your profits—when there are any profits, do you figure them upon the capital of the company or companies?

A. Figure it on the business transacted.

Q. To pay dividends?

A. Well, to do whatever the stockholders may determine.

Q. Let us understand this. If you were figuring up dividends which were to be paid to your stockholders, would you base your calculations upon business done?

A. Base it upon the results obtained.

Q. Well, what do you mean, what did you mean a moment ago when you said upon business done or however the stockholders might determine? What did you mean [fol. 1338] by that?

A. I mean whatever the result of the business was for the year would be the determination of the stockholders as to whether they could or could not pay a dividend.

Q. Well, now, in distributing your dividends would you base your calculations upon the capital of the company, if you were declaring a dividend?

A. As to the per cent to be returned?

Q. Your per cent of the dividends.

A. It is usually based on the 10 per cent or 15 to 5 per cent of the capital of the company.

Q. Of the capital?

A. That is usually the way it is arrived at; pay 5 or 10 per cent dividend.

Q. That is based upon the capital?

A. Yes, that is the usual method.

[fol. 1338] Q. There is no other way to do it, is there?

A. Well, I haven't heard that there is any other way that they do it. I can't see how they could.

Q. Now, if the law of Missouri requires that in arriving at an experience for the making of rates you take into consideration the premiums received and losses and expenses paid—now, when you arrive at a question of profit or loss do you base your calculations and your percentages upon the capital stock?

A. Your question is that if the law of Missouri provides for arriving at profit and losses on the basis of premiums received, losses and expenses paid, do we base the percentage of profit on the capital of the company?

[fol. 1339] Q. Yes.

A. No. The percentage of profit in Missouri would be on the basis of the business done in Missouri.

Q. Well, do you limit all your calculations to just the business done in the State of Missouri?

A. No, we take all the states.

Q. Well, if it is a fact that in the State of Missouri there are included in those reports operations that transpire entirely outside the state—for example, expenses that it has been pleased to call "imperial" expenses here—the expenses of operations of banking and investments are allocated to the State of Missouri, so that matters are considered which happened entirely outside of the State of Missouri and are included in the reports in that state upon which the experience of the year or the five year period was based——

A. Is that a fact?

Q. That is a fact. Now, then, you would have to go beyond what you just said a moment ago in arriving at a percentage of profit or loss, wouldn't you, in arriving at a percentage of profit or loss in Missouri?

A. I don't see why I would.

Q. Well, what is this expense doing that happens in New York or happens in North Carolina? If you are just going to figure what happened in Missouri, what place has that got in that report, Mr. Froggatt?

A. Its proportion of overhead expense.

Q. You mean general overhead expense?

A. Applicable to the business throughout the country, prorated on the basis of the premiums of any particular territory.

[fol. 1340] Q. The premiums of the entire country?

A. Yes.

Q. And you so allocated those "imperial" expenses?

A. I think that is the custom, although I haven't made up those returns, or passed on them.

Q. Now, you have no invested capital—these companies have no invested capital in the various states, have they—for example, the State of Missouri?

A. No, not any New York company. A New York company has its capital in New York, where it is incorporated.

Q. But could you allocate the capital of the company to the various states in arriving at a conclusion?

A. Not very well.

Q. Why?

A. I don't see how you could do it.

Q. You allocate expenses, don't you?

A. You might allocate capital entirely on the basis of premiums, premium writing, to the total.

Q. On the same basis you allocate expenses?

A. Yes, you might; if you wanted to do it for some purpose.

Q. All right. Now, there is no provision in the Missouri law that rates must be based upon an underwriting experience alone. You would have to consider the experience of companies generally over the country, at least in some respects, wouldn't you? That is, if you were going to allocate expenses to the State of Missouri?

A. If there is no provision in the insurance law, you say?

Q. Yes; that the rate shall be based upon underwriting experience in the State of Missouri, purely?

A. Yes. I don't know how you would do it if there was [fol. 1341] any provision. The companies would use their usual method of building up a rate.

Q. Well, assume that the statute provides that this rate shall be based upon the premiums received over a specific period, and the losses and expenses paid.

Mr. Folonie: We object to any such——

Mr. Jacobs (interrupting): Wait until I finish my question.

Q. (Continuing:) —that the earnings shall be figured and upon those earnings a rate based?

Mr. Folonie: We object to any such assumption because there is no such law in Missouri or any other place in the world.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. My answer would be that if the state provides for something and insists upon its enforcement or cancellation of license, the company would have to follow the dictates of the state or get out of the state.

Mr. Jacobs:

Q. Now, in arriving at the profit and loss for the purpose of making rates in Missouri and arriving at the question of earnings, Mr. Froggatt, there is only one way by which it can properly be done, isn't there, and that is to base it upon the capital of the company?

A. I don't think the capital has got anything to do with it.

Q. Well, that is the way you figure the percentage of dividends don't you?

A. That is a different matter.

[fol. 1342] Q. How is that?

A. That is a different matter.

Q. That is the way you figure the profit of the corporation, don't you?

A. Figure the profit?

Q. Profit of the corporation.

A. We figure it on the business transacted, less its expenses and losses incurred.

Q. How is that?

A. We figure the profits of an insurance company on the business transacted, less its expenses and losses incurred.

Q. You are not taking into consideration the banking operations at all, are you?

A. Well, we take that in, of course; but you said we figured it on the capital. I don't quite understand it.

Q. Well, have you—if you had a certain sum of money left over after the year's business, and you had a certain fixed capital—which you would have if you had a corporation, I presume.

A. Yes, a million dollars, we will say.

Q. A million dollars, we will say. And you had $100,000 left at the end of the year after everything was paid, what would you say would be your percentage of profit.

A. I wouldn't say that that would necessarily make a profit.

Q. How is that?

A. I wouldn't say that that would necessarily make a profit or mean anything.

Q. Might not mean profit?

A. No.

Q. I am assuming you had certain definite receipts for the year and that you paid all expenses of every kind and character that you may have had and that you had a sum of money, $100,000, left after all expenses were paid out of [fol. 1343] your receipts for the year. What would you denominate that as profit?

A. No.

Q. What would you call that?

A. A balance of receipts over disbursements.

Q. And that is not profit?

A. No.

The Referee: What is profit?

A. What is profit?

The Referee: Yes.

A. The results of your business, calculated not on receipts and disbursements, but on earned premiums, incurred losses and expenses, and investment income; investment earnings.

Mr. Jacobs:

Q. Well, now, the net result of your statement is, isn't it, that your profits would be, first all that you took in in the way of money, and take from that all you paid out in the way of losses and expenses, and add to your original receipt all that you made on your investments, if you made anything,

less all your losses and expenses in the handling of those investments, and your net result would be profit, wouldn't it?

A. Providing this was beginning and end of the company, yes; not for any one year.

Q. Not for any one year?

A. No.

Q. Well, what part of that money that was left there would be profit and what part of it would be something else, and what would it be?

A. I don't know. I couldn't tell you.

Q. Well, is insurance accounting different from any other kind of accounting?

A. Yes, quite different.

[fol. 1344] Q. You take into consideration elements that are not present or elements that are present and you would not in ordinary mercantile accounting, banking or something of that sort?

A. Oh, yes.

Q. Well, if you had a store and your yearly receipts were $100,000, every dollar's worth of operating expense was paid and you had $10,000 left, would you have a profit in the operation of the business?

A. That would depend on whether you owed any bills.

Q. Well, I say if you pay ever bit of your expenses, paid it all, would you have a profit?

A. Yes; didn't owe anything.

Q. Would you say you had a profit?

A. Oh, yes.

Q. What would you say you had a profit of it?

A. I don't know.

Q. You have got $10,000 there, would that be all or part profit?

A. If you had bought and paid for all your goods and had sold them all, and your expenses had been paid—if you have sold all your goods, you have paid for them and you have paid the expenses of this business, the remainder must be profit, of course.

Q. Well, of course you wouldn't clear out your stock entirely, but wouldn't you invoice that at your—at its market value at that time, and wouldn't that figure as one of your assets at the time?

A. Yes. It would be in your assets. That would be the proportionate profit you made.

Q. With all those things taken into consideration, would that $10,000 be profit?

A. Yes.

[fol. 1345] Q. Well, how about an insurance company? If you have taken in money and paid out money and got a balance is that profit?

A. No.

Q. What is it?

A. As I said before, the difference between income and disbursements.

Q. Well, is that profit?

A. No, not necessarily.

Q. What is it?

A. The balance between income and disbursements, what is left.

Q. I understand that thoroughly, but what do you call that?

A. I don't call it anything.

Q. You don't call it anything?

A. No, except the balance or difference between income and disbursements.

Q. How do you find out if you have a profit?

A. We take the operations of the company, ascertain the underwriting profit of the operations of the company, ascertain the underwriting profit and the investment profit. That will be a profit when ascertained in the method we have been describing here.

Q. Well, if you have got some money left there under these calculations you have a profit, haven't you?

A. Yes, but you have been talking about income and disbursements. I am talking about a different thing. I am telling you how to arrive at profit. That is what you asked. It is not arrived at by taking the money you take in and the money you pay out.

Q. You mean that you want to limit that to your own method of calculation in arriving at an underwriting profit?

A. I want to limit it to the proper method of arriving at profit.

[fol. 1346] Q. Well, that is, that is your method?

A. Yes, the method I believe is the proper method of arriving at it.

Q. That, you say, if you use that method you have got a profit in there if you have some money left over?

A. Yes.

Q. Upon what do you base your percentage of profit?

A. The percentage of earned premiums, for instance, on the underwriting.

Q. Percentage to earned premiums?

A. Yes.

Q. And how about the other end of it, the banking end?

A. The percentage to the total amount invested.

Q. If you were going to pay some dividends, how would you figure what you were going to pay?

A. If I had a half million dollars, the profits of the two, I would consider just how much it would take to pay a five per cent or ten per cent dividend and whether I could afford to do it.

Q. When you say five or ten per cent, how do you arrive at that per cent?

A. On the capital stock of the company; and how much money it would take and whether I had enough profit from my operations to pay that dividend.

Q. When you figure your profit, generally speaking, then I want to know whether the percentage of your profit, as an accountant for the Home Company, you figure the relationship between your balance, using your own method of figuring to get that balance, and your capital stock—don't you?

[fol. 1347] A. No, I don't. I figure the profits as I have just described and the percentage of profit obtained is the percentage, in underwriting, to earned premiums and investments and the earnings on investments. When I have arrived at that I have got the profit. If I want to determine as to how much I may pay out, of that profit as a dividend, I figure that there is so much capital stock. If I want to pay out $100,000 or $200,000 it bears a certain percentage to that capital stock. And I advise my stockholders that we are ready to pay on that capital stock a certain per cent of dividends.

Q. You only consider capital stock really to the extent of knowing to whom and to what extent and in what degree

to divide this money you are going to give out as dividends, don't you?

A. That is it.

Q. That is your position?

A. Yes.

Q. The question of the percentage of profit which is declared as dividends really has no existence, according to your way of figuring it, has it?

A. That is right.

Q. Well, suppose you had a telephone company and you received rates which gave you a certain sum of money, $100,000, and you paid all your expenses and had $10,000 left at the end of the year, what would you say your profits were?

A. I would say——

Q. (Interrupting.) What per cent?

A. That looks like $10,000 on $100,000 or ten per cent.

Q. Suppose you were capitalized for $50,000 and you had $10,000 left at the end of the year, after all your expenses were paid, and you did $100,000 worth of business and you [fol. 1348] had $50,000 capital stock?

A. 20 per cent of that $50,000 would be the per cent of profit there.

Q. Well, your profit would be 20 per cent, wouldn't it?

A. Yes.

Q. Now, you are figuring that on your capital stock?

A. I am telling you what it is on your capital stock.

Q. Is that the proper way to figure it It is, isn't it?

A. I don't know. I am not an expert on these utility companies.

Q. You are a general accountant, aren't you?

A. No, I am an insurance accountant.

Q. You say you don't know anything about accounting outside of the insurance business?

A. No. I say I don't know the details of the public utilities business.

Q. Have you ever had any experience along the line of accounting for either public utilities or ordinary business?

A. No, I don't do that kind.

Q. You have never had any experience along that line?

A. No.

Q. Your experience has been accounting for insurance companies?

A. Yes.

Q. And isn't your method that you use an arbitrary one which only applies to insurance companies?

A. I don't know whether it is one that only applies to insurance companies or not.

[fol. 1349] Q. Have you known of it to be applied in any other concern?

A. No.

Q. Now, you stated this morning—and I didn't understand exactly what you meant—I may be able to remember. I don't know just why you took a new company in this matter, but you did, in making those calculations, take a new company; capitalized for $200,000; with a surplus of $200,000. And you did a million dollars' worth of business, in your first year. Do you recall that illustration you used this morning?

A. I do.

Q. How much of that million dollars did you say went into the reserve?

A. 60 per cent. That is the average on a new company at the end of its first year.

Q. $600,000?

A. Yes.

Q. What did you say, that there was a 30 per cent loss the first year, as an average?

A. I said assuming that the expenses would be 40; 45 and 30, I think it was.

Q. That would be $300,000 and $450,000.

A. Yes.

Q. And I believe that you said that you took those two items, which amounted to $750,000 and that you figured $450,000 expenses and $300,000 losses?

A. Yes. That is $750,000. And $600,000 liability.

Q. And that would make how much?

A. $1,350,000.

Q. And that you started out with your capital stock and your surplus and your business amounted to $1,400,000——

A. (Interrupting.) Yes.

[fol. 1350] Q. Now, what was your idea in making that statement? You of course wound up by saying it absorbed

your surplus and impaired your capital to the extent of $150,000.

A. I don't remember what the questions were.

Q. You quit right there. Do you know or do you understand why Mr. Folonie asked you that?

A. I don't remember what the question was.

Q. I don't, either. I don't think there was any question. You wound up by making this statement——

A. (Interrupting.) Must have been something to cause it to be made.

Q. (Continuing:) —absorbed your surplus and reduced your capital to $50,000, or reduced it $150,000.

A. I presume—I don't know—I don't remember why.

Q. That is why I am asking you. I don't know, myself.

A. I don't either. I don't remember the question.

Q. At any rate, it is not a fair representation of the average experience of a company of any length of experience, is it?

A. Fair in this way, that if the company did that amount of business this would be the result, but they couldn't possibly undertake to do any such amount of business, because they would know what the result would be. It would wipe them out.

Q. And so an impracticable situation, anyway, in that question?

A. Well, I have known companies that used about the same amount of judgment and wrote proportionately large business and put themselves out, or in position where they had to go out and get more surplus.

[fol. 1351] Q. But you were not relating a classic case when you gave that illustration?

A. Oh, no.

Q. Moreover, as time went on you would be accumulating the earnings upon that unearned premium reserve.

A. Oh, yes.

Q. Earnings and investments have to be figured against the capital stock, don't they, Mr. Froggatt—earnings and profits, I mean?

A. I don't understand. Have to be figured why?

Q. To arrive at the percentage of earnings or percentage of profit.

A. If you want to know how much dividends you can pay, whether the earnings represent five or ten or fifteen per cent of your capital stock, you arrive at it in that way.

Q. And if you were trying to arrive at the earnings in the State of Missouri with your allocated expenses from all over the country you could allocate your capital on the same basis, couldn't you, that you allocated expenses?

A. You could if you wanted to arbitrarily do it on the question of premiums, yes.

Q. And in that way you could arrive at your percentage of profit of earnings upon your allocated capital stock—in that state?

A. That is, you could say that you made so much money on underwriting in the State of Missouri; that calculating that and the allocated capital on the premium basis that it would represent a certain percentage.

Q. Of earnings or profit?

A. How?

Q. Of earnings or profit?

A. Yes; on that basis.

[fol. 1352] Q. Have you familiarized yourself with the character of the Home Company's and these other companies' investments, which you represent?

A. Familiarized myself in what way?

Q. With the character of their investments.

A. The companies I audit regularly, as I said before—I do not audit the Home, so I have nothing to do with the investments.

Q. That is, you mean the Home Insurance Company?

A. At the head office, yes.

Q. But do you audit for other companies where you audit the head office business?

A. Yes.

Q. What is the general character of their investments?

A. Principally stocks and bonds.

Q. Railroad stocks?

A. Railroad stock, yes.

Q. Railroad bonds?

A. Railroad bonds and Liberty Bonds.

Q. Industrials?

A. Not to a large extent. They stay out of industrials as a rule. There are some, of course.

Q. What about the proportion of mortgage loans, real estate mortgage loans?

A. Some companies quite freely and some not so freely.

Q. Isn't it your general experience that there is very little investment in first mortgage—isn't it your experience that companies as a usual thing do not invest in first mortgage real estate loans?

A. I think in some of the western companies that the investments are quite largely in mortgage loans.

[fol. 1353] Q. Well, how about these—generally speaking, those companies which you represent here?

A. I think the investment in mortgage loans is a small part of their assets.

Q. Now, those are safe loans, aren't they? They are loans upon real estate security?

A. You mean the ones those companies have?

Q. Any first mortgage real estate loan is regarded as a safe loan, isn't it?

A. It is generally so regarded.

Q. Have you had occasion to—in accounting for those companies—to consider the rise and the fall of the market on various stocks that you found in their possession?

A. Oh, yes.

Q. And sometimes the market goes one way and sometimes the other?

A. Sometimes an appreciation and sometimes a depreciation.

Q. And these are stocks, you say, and sometimes of railroads?

A. Mostly in railroads.

Q. To that extent, of course, they depend for their value upon the rise and fall of the market?

A. Oh, yes.

Q. And of course are speculative to that extent?

A. Yes.

Q. Do they invest in real estate much?

A. No; no. There is some home office buildings.

Q. Do you regard a real estate mortgage loan as a liquid asset?

A. Not very.

Q. No market for them——

A. Not very; not much.

[fol. 1354] Q. I don't mean a market in the sense of being quoted on the Exchange, but you say there isn't a ready market for them?

A. I don't think so.

Q. How long have you got in which to pay a fire loss after it occurs?

A. I don't know what the limit is.

Q. Well, it is usually at least sixty days; you don't have to pay it at all?

A. Don't have to pay it before sixty days, no.

Q. Do you think the first mortgage real estate loan is not sufficiently liquid to dispose of in sixty days, or any part of them?

A. Well, I think in case of very serious loss you would have difficulty in raising the money through mortgage loans. The sale of mortgage loans.

Q. Now, in these speculative stocks about which you have spoken, haven't it been your experience that your investments in stocks have resulted in great losses to the companies?

Mr. Folonie: We object to the term "speculative stocks." He hasn't used that expression at all.

Mr. Jacobs: He didn't use the word speculative, no. He used the words, "stocks that depend for their value upon the rise and fall of the market."

A. My answer——

The Referee (interrupting): Read the question.

(Question read by the reporter.)

The Referee: Change the form of the question.

Mr. Jacobs: Cut out the word "speculative" and just say "the stocks in which they invested."

A. No, sir.

[fol. 1355] Q. That is not a fact?

A. I don't believe it is.

Q. Now, I had in mind, Mr. Froggatt, certain reports which these companies made to the State of Missouri and certain testimony which was taken relating to their investments which showed great losses and very small gains. Now, are you stating that you don't think that is a fact?

A. No.

Q. From knowledge?

A. No.

Q. What are you stating it from?

A. I am simply—you asked me whether in my experience I thought that the companies generally sustained serious losses in their investments, and I said that I thought not; so far as my experience goes.

Q. Isn't it a fact that the interest earnings upon your reserve—your premium reserve is vastly greater than any profit you might make or have made upon your investments?

A. I couldn't answer that.

Q. You don't know?

A. I don't know.

Q. And you are not prepared to say that the companies haven't sustained great losses in the purchase of stock and things of that character?

A. No, I couldn't say.

Q. From '17 to '21?

A. I don't know.

Q. Don't know?

A. I don't know.

Q. Now, I wanted to ask you if you have ever run across this account: Say in the year 1919, where the Globe Rutgers Fire Insurance Company lost a million—$1,747,312 on its investments for that year?

A. No, sir, I have not.

[fol. 1356] Q. Or the Great American Insurance Company of $1,425,925 net losses on their investments?

A. Is that loss on sale of securities?

Q. That is loss on their investments for the year 1919.

A. I don't know anything about that.

Q. Whether it was a sale of securities or whether a book loss I don't know.

A. I don't know anything about that.

Q. Now, the Home Insurance Company, the one you have made some inquiry about, do you know or don't you know, as one of its accountants, that for that year, 1919, it lost $2,581,488?

A. I don't know, sir.

Q. Net losses on its investments?

A. I don't know. I have nothing to do with the head office accounting.

Q. Westchester Fire Insurance Company, $830,663?

A. I don't know.

Q. Do you represent any of these companies outside of the Home?

A. Westchester.

Q. You represent it?

A. I do.

Q. Do you go over its head office accounts?

A. I do.

Q. Have you ever had occasion to know, then, as the accountant, who goes over its books, what its investment losses for 1919 were?

A. I probably did, but I don't know now.

Q. Well, is $830,000 an approximate figure, according to your recollection?

A. I don't know; I couldn't say.

[fol. 1357] Q. You have never gone over the head office experience of the Home Company, have you?

A. No, I haven't.

Q. I believe you testified this morning that because the insurance business is a hazardous sort of business that it should be made particularly attractive to investors by permitting them certain things like the earnings upon premium reserve and stuff of that kind—did you so testify this morning?

A. I testified I thought there ought to be some inducement for a man to put his money into a Fire Insurance Company, in view of the fact that his investment might at any time be wiped out by a conflagration.

Q. What do you think a fair return for the stock of the Home Company would be per year in the way of dividends?

A. I don't know just how that stock was contributed; whether they have had to pay for it two or three or four hundred per cent or what it is.

Q. You mean because it is worth that now?

A. No. I mean that if they paid 40 per cent dividends it might only mean a 10 per cent dividend on the investment.

Q. How is that?

A. I mean if they paid a 40 per cent dividend it might only mean 10 on their actual investment.

Q. Well, first, would you consider 25 per cent a year a fairly good dividend?

A. I would consider it was a good dividend, provided it was 25 per cent on the actual money invested.

Q. Not many businesses return a dividend of that kind? [fol. 1358] A. No, I don't know. I haven't any stock in any companies. I don't know very much about what they are returning. I should like to get that.

Q. Twenty-five per cent per year is a good record, isn't it?

A. It is.

Q. And you would like to get it yourself?

A. Yes.

Q. And an addition of about 90 per cent on the surplus besides that dividend makes it a still better record, doesn't it?

A. That is a very fine record.

Q. Very fine. Now, you would want to know something about the history of the company that would pay like that before you would want to commit yourself on whether that was enough?

A. Yes.

Q. Now, the Home Insurance Company seems to be the company we were inquiring about yesterday, and that you sort of followed up. Now, its assets are worth $75,000,000—now, by the way, you testified this morning that there have been several big catastrophes of this company, the conflagration of Chicago, Baltimore, Frisco?

A. Yes.

Q. And there were a number of companies that went out of business?

A. Yes.

Q. During those conflagrations. And you testified their aggregate capital was about $65,000,000, didn't you?

A. I think it was. I don't remember the figures now. I have them here. Do you mean the losses of capital and surplus was—it was, I said, $68,975,043.

[fol. 1359] Q. Now, the assets of this one company alone, the Home Company, is worth more than that, isn't it—$75,000,000, isn't it?

A. I don't know just what they are.

Q. Isn't that about correct?

A. I think it is. So far as I remember.

Q. Now, Mr. Froggatt, in 1920 the capital of the Home Insurance Company was $6,000,000?

A. In 1920?

Q. Yes, 1920. It had been increased from, in 1913, seven years before, from three million to six million. That is, the capital stock, by a stock dividend of three million dollars, and by a stock dividend, of course, that is surplus. That is not distributed in the way of dividends but is given to the stockholder in the way of stock, isn't it?

A. Yes.

Q. That is profit, isn't it?

A. That is a distribution of profit, yes.

Q. (Reading:) "The bulk of its then capital was paid for out of dividends. The stockholders received in cash dividends and stock dividends $32,495,000." Stock holders of this particular company. "In addition to which there is an accumulated surplus of $63,000,000, making a total of over $95,000,000 that has been earned by the Home Insurance Company since its organization in 1853." Now, that is a good record, isn't it?

A. That is a good record.

Q. Do you know what its capital was in 1853?

A. No.

[fol. 1360] Q. $500,000; is that right?

A. I don't know.

Q. Well, if $500,000 was the capital of the Home Company in 1853 and it has had the record which I just read to you, that is a remarkable business success, isn't it?

A. Surely is. It don't say there anywhere how much money the stockholders paid in, does it?

Q. Yes.

A. Altogether?

Q. Yes. "The $500,000 has from time to time up to 1920 been increased to $2,000,000 by cash subscriptions by the stockholders." Now, with that additional information and in the light of its earnings of $95,000,000, that is a remarkable business record, isn't it?

A. It surely is; unusual record.

Q. "At the end of the last ten year period there was about $15,000,000 added to the net value of the Home stock, in addition to which it had paid about $28,800,000 in divi-

dends during that period, or an average of $2,800,000 per year," for ten years. Now, in the light of the fact that the increase from 1853 was $2,000,000 paid in in cash by the stockholders and for ten years they received those payments of $28,800,000, $2,800,000 per year, that is a remarkable business, isn't it?

A. It certainly is.

Q. "At the beginning of the ten year period the net value of the stock was $19,800,000." Now, there isn't anything about that record that would be convincing to anybody that the insurance record—the insurance business is particularly hazardous, is there?

A. Nothing about that particular record, but take the record of all companies and it would be different.

[fol. 1361] Q. This company was organized in 1853, and the Chicago fire and the Baltimore fire and the Frisco fire have all transpired within its history, haven't they?

A. Yes.

Q. General Barker suggests a matter that I wanted to ask you about just a moment. Do any of these companies that you represent own other corporations?

A. Yes.

Q. Do you include the earnings of those other corporations in arriving at your results here?

A. The companies I represent that own other corporations, they own them through investment companies and run them as separate organizations. The earnings of the investment company would of necessity be included in the earnings of the company who own the investment.

Q. Now, for example, the Home Company, does it own any other corporation?

A. I don't know anything about those Home office affairs.

Q. If it owns a corporation which is a holding company for its real estate, for example, the building which it occupies; now, what do you think about this situation, Mr. Froggatt: The officers of the Home Company whose salaries are allocated to the State of Missouri as part of the expense of operation, without charge to the holding company at all, transact its business, and the insurance company pays rent to the holding company. Now, do you think—what do you—where do you think those earnings should go, of this holding company?

A. It should go, like any other investment earnings, into the investment account. It is an investment in stock.

[fol. 1362] Q. And then go to whom when it gets into the company? Say into the Home Company? Then who does it belong to? To the company?

A. Belongs to the stockholders.

Q. Oh, to the stockholders?

A. Yes.

Q. Now, the expense of operating this holding company is paid by, say, the policyholders of the State of Missouri, in part; to the extent, I mean, that those salaries and those expenses are allocated to the State of Missouri and they furnish the basis of rate making. Now, do you think that under those circumstances that ought to be done?

A. Is that a fact?

Q. That is a fact. A. What expenses could there be for running a little holding corporation in connection with a real estate proposition for their own—of their own?

A. I don't know what the extent of their holdings are. I am only talking to you about the testimony of one of their vice presidents. You have, for example, the operation of the business, however, extensive it may be, no doubt a tremendous investment in this building in New York City, and the repairs and the manifold——

A. (Interrupting.) Do they pay anybody to look after it?

Q. The testimony was that these officers of the Insurance Company operated this business of the holding company.

A. Without any help—pay at all?

Q. I don't know about that part of it because I don't think that was testified to.

Mr. Folonie: Yes, it was.

Mr. Jacobs: Was it?

[fol. 1363] Mr. Folonie: He said he had a manager on salary and their own employes were paid by that investment company; but the officers of the Home Insurance Company had a general supervisory charge of it, for which they made no charge.

Mr. Jacobs: I think that is an extremely fair way, to the companies, of stating the testimony.

Q. Now, my understanding of the testimony was, Mr. Froggatt, that these officers of the Home Insurance Company——

Mr. Folonie (interrupting): I undertook to state it impartially as to you as well as to myself.

Mr. Jacobs (continuing):

Q. My understanding is that these officers who are paid by the fire company and whose salaries are allocated to the State of Missouri without charge operated this other business; that the Insurance Company paid rent to this other business, which rent, in turn, was allocated to the State of Missouri. Now, no part of the earnings of that company was considered in making the reports to the State of Missouri. Now, do you believe that that ought to be done? Do you believe it ought to be handled in that way?

A. I believe an investment company should be run as an investment company and the expense of that company paid by the investment company.

Q. Entirely?

A. Yes. And then the results, of course, if there are any, paid over to the people who own the stock.

Q. And the stockholders should get the profits?

A. Yes, certainly; just like they would get it from Liberty Bonds or anything else.

[fol. 1364] Q. And their corporation should pay the capital stock?

A. No. I didn't say that. I say the investment company should pay the expense.

Q. That is the only fair way of doing it, isn't it?

A. Well, it seems to me to be a proper way.

Q. In any of the companies for which you are an accountant, do any of the members, officers or members of the board of directors, own in part or in whole other companies or corporations?

A. Any of the officers own——

Q. Or directors—concerned in other corporations outside of these Insurance Companies? Either as officers, directors or stockholders?

A. No, not that I know of, no.

Q. You don't know of any such instance?

A. No, I don't; not with the companies I represent.

Mr. Jacobs: I think that is all.

By the Referee:

Q. One question. In determining whether or not a given business is a hazardous business or non-hazardous is it fair to take as a basis the number of failures in that line of business, as compared with the total number of persons engaged in it?

A. I think it is if you go over a period of years and if I had had more time to do so I would like to have gone back a great many years to ascertain how many companies had entered this business and what capital and surplus had been invested and how many still remained and just what had been the experience throughout, and I think it would show——

[fol. 1365] Q. (Interrupting.) Could you——

A. (Continuing:) ——a great deal more than we brought out here; and would more than have illustrated to you the hazardous nature of this business.

Q. Could you give me briefly an idea of how the failures in the fire stock insurance business compared over a period of say the last twenty-five years with the failures, for example, in the banking business or merchandising?

A. I couldn't offhand, no, sir; not without looking up statistics.

Q. You have information along that line?

A. No, sir.

Q. Would it be a fair test to compare, in determining the relative hazardousness of the Fire Insurance Companies, to apply that method?

A. I think it would; taking into consideration, of course, certain elements connected with both classes of business.

The Referee: Certainly. That is all.

Redirect examination by Mr. Folonie:

Q. It would be indicative of the hazards of the business, to some extent?

A. Yes.

Q. Now, you have been asked whether you ever knew of a company returning all its earned premium to the policy-holders. That is exactly what does happen when a company liquidates, isn't it—if they have sufficient funds to do it?

A. Yes, if they have sufficient funds they pay pro rata, of course, of the remaining funds.

Q. When you said you knew of no company which had returned its unearned premiums entirely to policyholders [fol. 1366] you meant any company that continued in business?

A. I meant any company who was solvent.

Q. Yes. And when they returned the premiums to policyholders they are automatically out of business, aren't they?

A. They wouldn't do it otherwise, I guess.

Q. Now, counsel asked you about the percentage of earned and unearned premiums and I think you mentioned something like 85 per cent unearned and 15 per cent earned.

A. On the average company, yes.

Q. That was of the current year's writings, that percentage you mentioned?

A. Yes, the percentage of the unearned premium of an average company would bear to the premium writings of any one year.

Q. Now, take for example—you have before you a regular printed form of annual statement of a Fire Insurance Company, have you not?

A. I have.

Q. Referring to page 7, take in the year 1922, policy, we will assume—policies of one year or less—what percentage would be the unearned fraction of the premiums in 1922 writings?

A. 50 per cent.

Q. Now, in that same year, 1922, what percentage of two year policies written in the year 1921 would go into the earned figure for 1922?

A. $\frac{1}{4}$.

Q. And what percentage of two year policies gotten during the year 1922 would go into your earned premium figure?

A. $\frac{3}{4}$.

Q. Now, what percentage of the premiums of policies written in the year 1920 for three years, for three year policies, would go into your 1922 earned premium figure?

A. 1-6.

[fol. 1367] Q. What percentage of the three year policies written in 1921 would go into the 1922 earned premium figure?

A. 1/3.

Q. And what percentage of the policies written for three years and written during the year 1922 would go into the 1922 earned premium figure?

A. 1/3.

Q. Now, of the four year policies of those written in the year 1919, what percentage or proportion of the unearned premium would be used in the calculation of 1922 figures?

A. 1/8.

Q. What proportion of the unearned premium of four year policies written in 1920 would go into the 1922 figure?

A. 3/8.

Q. What proportion of the 1921 four year policies would go into 1922 calculation?

A. 5/8.

Q. What proportion of the 1922 four year policies?

A. 7/8.

Q. Now, of the policies written in the year 1918 for a five year term, what fraction would be unearned in 1922?

A. 1/10.

Q. And what portion of the 1919 writings would?

A. 3/10.

Q. And what five year policies written in 1920, what proportion?

A. 5/10.

Q. Of the policies written in 1921, what proportion?

A. 7/10.

Q. And what five year policies, of the five year policies written in 1922, what proportion would go in the unearned premium?

A. 9/10.

[fol. 1368] Q. Now, of the proportions, the difference between the fractional part which you have stated would go into unearned premium, what would happen to the remainder of it?

A. Go to the earned portion.

Q. So that in the year 1922 you would have part of the earned premium of five year policies, written in 1918, '19,

'20, '21 and '22, entering into your earned figure in 1922, wouldn't you?

A. Right.

Q. And of the policies written for four year terms you would have a portion of the premium of those policies written in 1919, '20, '21 and '22, entering into your earned premium figure?

A. We would.

Q. And of the three year policies written during 1920, '21 and '22 a portion would go into the 1922 earned premium figure?

A. Yes.

Q. And of the two year policies, you would have a part of those written in 1921 and '22?

A. That is right.

Q. And of one year policies, you would have a part of the premium of those written in 1922?

A. Yes, sir.

Q. In other words, this 15 per cent counsel asked you about, namely the earned portion of the premiums written during the current year, is increased by the amount of the earned premiums written during former years but which are in part earned during the current year?

A. That is right.

Q. So that this 15 per cent is not at all representative of the earned premium figure which you use in calculating your profit and losses for the current year?

A. Oh, no, no.

[fol. 1369] Q. Now counsel asked you about whether conflagration—if there had been an attempt to raise rates 10 or 15 or some other percentage to take care of conflagrations, whether it was proper to add another three per cent on top of it. That is about the substance of what I think he was trying to ask you. Now, if during a given period of years say, five years, the companies have been doing a loss during that period in a state so that the expenses and the losses combined—the incurred losses and the expenses, exceeded the earned premiums derived from that state to the companies during such a period, whatever the theory of calculation in the past may have been, do the companies during that period have anything for underwriting profit or conflagration reserve out of that state at all?

A. Not if the losses and expenses exceeded their earned premiums.

Q. Counsel asked you whether you could calculate the earnings of a company on an allocated or a part of the capital. You could if you wished, calculate it on all the capital, too, couldn't you, as a matter of calculation?

A. Oh, yes; take any calculation.

Q. You could calculate the profit, if you had one, against the capital of some other company, if you saw fit?

A. Oh, yes.

Q. In other words, after you once derived a profit and ascertained what it was, you could calculate it against anything you saw fit?

A. Yes; that is, find out what the percentage of that profit is to anything else.

[fol. 1370] Q. You have been interrogated quite a bit about the Home Insurance Company. It is generally regarded as the largest company in stock Fire Insurance business, isn't it?

A. It is.

Q. And makes more money than any of the rest of them?

A. I think so.

Q. Does it represent or state a condition so far as earnings and investments and returns are concerned of the average company in the business?

A. No.

Q. In other words, it is at the top of the heap?

A. Yes.

Mr. Folonie: That is all with this witness.

Mr. Jacobs:

Q. How do you know that?

A. From general knowledge.

Mr. Folonie: Just a minute. Mr. Hogsett says he wants to ask one question.

Mr. Hogsett:

Q. I am not clear about it and I would like to get clear on it. Mr. Jacobs asked you, Mr. Froggatt, if it was not unfair in the case of a five year policy to charge Missouri

with the whole commission paid in a certain year and yet credit Missouri with only the premium earned in that year. Now, what is it that offsets that apparent discrepancy?

A. The earned premiums of previous years, which are earned in that year.

Q. In other words, if I get what you mean, in the year 1922, for example, a five year policy might be written; only a part of the premium would be credited during that year, is that right?

A. Yes.

[fol. 1371] Q. But the whole commission would be paid during that year?

A. That is right.

Q. And on that phase of it that is an apparent unfairness?

A. Yes.

Q. If you stopped there. But if you calculate the five year policies written in 1921 and those written in 1920 and in 1919 and in 1918, you have a portion of the premium in each of those prior years that is becoming earned in 1922, do you not?

A. We do.

Q. And yet the commission on each of those policies would be charged altogether in the prior year?

A. That is true.

Q. And that is what offsets the apparent unfairness of that method of calculation?

A. That is right.

Mr. Barker: Wait a minute. We want to object to that last statement, because it does not offset it at all, to our idea. It doesn't follow at all.

Mr. Hogsett: That is all.

Recross-examination by Mr. Jacobs:

Q. Let us understand this, first. Let's have the witness testify. Mr. Froggatt, do you know whether or not those earned premiums which from time to time become earned premiums in a fixed year, say 1921, which is the last year in this investigation, whether those premiums which accumulate, three and two and five year policies, and the part

of them which become earned in 1921, whether their aggregate equalled the total writings of 1921?

A. No.

Q. You don't know that?

A. No.

[fol. 1372] Q. So that part of it is still left an uncertainty, isn't it?

A. Yes.

Q. Now, you spoke about premiums which were carried over and earned from year to year, in answer to both Mr. Hogsett's and Mr. Folonie's questions, didn't you?

A. Yes.

Q. Now, the year that premium was written it was carried over and became partly earned in 1921, the full expense of handling that including the full agency commission was paid that year, wasn't it?

A. Yes.

Q. The same was true of the next year of the five year period?

A. Yes.

Q. And of the next and of the fourth and of the fifth year, wasn't it?

A. For all the policies written in those years; but not repeated.

Q. Oh, no, I don't mean that, of course. I mean that every policy which was written in 1917 was paid for in full, in agency commission.

A. Right.

Q. In 1917.

A. Yes.

Q. And in addition to that all expense of carrying on the full amount of the business was paid that year?

A. All the expenses incurred that year for carrying on the business of that year.

Q. Yes. That process was repeated in 1918, wasn't it?

A. So far as expenses are concerned, yes.

Q. And 1920 and '21?

A. Yes.

Q. And when you reached 1921 you had scattered through this stuff certain premiums which had become earned from time to time——

A. (Interrupting.) Through those periods.

[fol. 1373] Q. From time to time, didn't you?

A. Yes.

Q. And as to what relationships those bore to the total writings of each one of these five years you don't know?

A. It could be calculated, but I can't tell you offhand.

Q. You had a total writing in '17?

A. Yes.

Q. A total writing in '18?

A. Yes.

Q. And each one of the five years?

A. Yes.

Q. And what these accumulated earned premiums that became earned in each of these separate years bore to those totals accumulated writings of each year you don't know, do you?

A. No.

Q. In addition to that, all expenses, however, were paid in each year?

A. Yes.

Q. In 1921 you did a certain amount of business—whatever it may have been, of this company, insurance business, in the State of Missouri. The 15 per cent of that business was figured for 1921—the last year of this period under inquiry, wasn't it?

A. 15 per cent on the current year's policies.

Q. Of the written business of that year?

A. Yes; we are assuming that is the average, yes.

Q. And you apply the expense of the entire business for that year?

A. Yes.

Q. That left at the end of a specific period an inequity, didn't it—bound to leave it?

A. Yes, unless you take into consideration the earned premiums of the previous year to offset it.

Q. But you have paid every year in full for them haven't you?

[fol. 1374] A. Yes, but you have earned premiums which were paid for in previous years which are now coming into this year and to offset those expenses.

Q. Now, Mr. Froggatt, you have these premiums becoming earned from year to year filling in to some extent, but to what extent you are not prepared to say?

A. Yes.

Q. But you paid for the full amount in 1919, for all the writings of that year, didn't you?

A. Yes.

Mr. Hogsett: Object to that as repetition.

Mr. Jacobs:

Q. You paid in full for that year, didn't you?

A. That is right.

Q. And there is nothing now that comes out of those premiums during that five year period. It was paid for in 1919, wasn't it, and it accumulates a little at a time through those five years.

A. Simply add it onto the premium earnings when it comes due.

Q. Yes, sir. And with the accumulation of expenses and with the end of a specific period of five years in 1921 there comes a time when you are paying the full expenses for only a partial business—for the specific period?

A. You have paid your expenses as you go along; each year. And at the end of the five years you have an accumulated earned premium to offset an expense which you paid that particular year.

Q. Yes, but you haven't got all the premiums in there, have you?

A. No.

Q. You will have all those unearned permiums at the end?

A. But you have a proportion of those each five years and each four years and each three years which go in and are earned in that last year.

[fol. 1375] Q. Yes, and you have a full expense for each year and a proportion of the premiums running each year?

A. It is quite possible you might have enough premiums there to represent the amount of premiums written that year.

Q. You never could on an ascending scale of business, could you?

A. We don't have that all the time.

Q. You have it in this five year under inquiry, don't you?

A. I don't know.

Q. Well, we will assume, for the purpose of this question, that you did.

A. If you are going to assume you have that, then that might be true.

Q. And it leaves you an inequity at the end, doesn't it?

A. It would under those circumstances, but might not otherwise.

Mr. Jacobs: I think that is all.

(Witness excused.)

The Referee: We will adjourn now, gentlemen, until tomorrow morning, which will be the 17th of October.

(Whereupon an adjournment was taken until 9:30 o'clock A. M., Wednesday 17, 1923.)

(Pursuant to adjournment heretofore noted, parties reconvened at the same place on Wednesday, the 17th day of October, A. D. 1923, at 9:30 o'clock A. M., and the following proceedings were had:)

[fol. 1376] Miles Walsh, called as a witness on behalf of plaintiffs, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. Miles Walsh.

Q. By what company are you employed, Mr. Walsh?

A. Niagara Fire Insurance Company.

Q. Is that the company of which Mr. O. E. Lane is the president?

A. It is.

Q. What is your position with that company?

A. I am the assistant secretary.

Q. And in general what is the nature of your duties?

A. I am in charge of the accounts.

Q. And you have been requested to produce certain information from the books of account of your company? And make calculations respecting them, have you not?

A. Yes, sir.

Q. One of the things requested to be produced was a statement indicating the state of the investments of your

company showing the profits and losses from the sale of securities in fact disposed of during the period from 1917 to 1921, and the market changes in the securities held and not disposed of. Have you made examination of your books so as to be able to give us those figures?

A. Yes, from '16 to '22.

Q. You have made them figures including not only the years 1917 to '21 but also 1916 and 1922, also, have you?

A. Yes.

[fol. 1377] Q. Well, I will ask you only about the years '17 to '21, and if my opponents wish the other figures they may ask for them. Now, starting with the year 1917, tell us, in the first place, do you have both parties profits and losses during a given year upon securities actually disposed of, as you keep your records?

A. Yes.

Q. And then whether you have in fact a balance for or against depends on balancing those two figures against each other, does it?

A. Yes.

Q. So when you speak of a profit during a given year as you keep your books that does not mean that is the balance of your profit, balancing it against losses but it is the profits derived from those securities which were sold at a prior date?

A. Yes.

Q. And the losses derived during that year are the losses upon those securities which you sold at a loss?

A. That is right.

Q. Now, in the year 1917, what were the profits derived from securities sold during that year by your company which were disposed of and sold at a profit over their original cost to your company?

A. $1,625, and the losses were $886.20.

Q. And what was the gain or loss upon the securities of your company that year which were held by you and not disposed of?

A. There was a loss of $189,376.25.

Q. That latter figure means that the value upon the markets where they were quoted or their values appeared had changed to that extent from the original cost of the securities and they are therefore regarded on your books,

[fol. 1378] although the actual profit or loss was not in fact derived or taken.

A. That is right.

Q. Give us the same figures for 1918.

A. Profit on sales for 1918 was $1,927.80. The losses on sales were $19,679. The losses due to change of market value during 1918 consisted of two items, $15,380 and $103,048.23.

Q. Why divide it into two items?

A. One of them was really charged off and unlisted as assets because it was considered to be no good.

The Referee: At what time in the year did you take the market value of these stocks on which you sustained a loss?

A. December 31st.

The Referee: Each year?

A. Yes.

Mr. Folonie:

Q. And your profit or loss that you took for a week or two weeks or a month before, if you took it a week of two weeks or a month before, might be a different figure?

A. Oh, yes; depending on the market.

Q. In other words, these figures you are giving base then—the last figure of your profit or loss as to those named is not profit or loss of a period but as of a certain date, is that?

A. Yes.

Q. And that date is December 31st?

A. Yes.

Q. All right. Now, your next year. What year is that?

A. 1919 is the next year. Profit on sale, $4,203.59. Losses on sale, $487,854.67. Gain due to change in market value, $213,254.01.

[fol. 1379] Q. 1920?

A. Profit on sale, $8,641.80. Losses on sale, $49,167.00 Loss due to change in market value, $39,835.30.

Q. 1921?

A. Profit on sale, $8,651. Losses on sale, $8,565.63. Gain due to change in market value, $86,485.61.

Q. These figures that you have given, do they cover all the securities that your company held at December 31st of these respective years?

A. The transactions as to profit and loss show all securities which we had theretofore held which were disposed of during those periods, yes.

Q. Have you prepared from your books a tabulation of underwriting profits of your company before and after taxes for the respective years 1917 to 1921?

A. Yes.

Q. Is that paper it?

A. That is it.

Q. Is that true and correct, from your books and your records?

A. Yes.

Q. Now, you have 1916 and 1922 on this, you said.

A. I do.

Q. With your permission I will cross those out, because we are desirous of securing the years 1917 to '21 inclusive.

Mr. Barker: I wouldn't strike them out. I want to look at them first. They were produced for me, I understood, and if you strike them out I can't see them. Let me look at them before you strike them out.

{fol. 1380} Mr. Folonie: I withdraw my suggestion about striking them out. I thought the other would simply encumber the record. I have no objection to leaving them in.

(Mr. Barker examines document, after which discussion ensues.)

Mr. Folonie:

Q. Mr. Walsh, counsel has so evidently a misconception of the tabulation you have made, you have a percentage figure in the last column opposite the year 1916, for example, of 45 per cent. What does that 45 per cent indicate?

A. That 45 per cent represents that portion—that percentage of total profit which was for stockholders.

Q. Percentage of what?

A. Of the underwriting profit. The total underwriting profit was $287,000, of which—that was before taxes—of which $157,900.20 or 54 per cent had to be paid in taxes, and the other 45 per cent, $129,903.97, was theoretically left for the stockholders.

Q. Does that mean that you had a 45 per cent underwriting profit that year?

A. Oh, no; not at all.

Q. In other words, you are dividing the underwriting profit before taxes, between taxes and stockholders, and finding what part of it is derived, what part of this derived profit goes to taxes and what part to——

A. (interrupting). True.

Q. So your 45 per cent is the stockholders' share of that derived profit, as distinguished from the part that goes to the governmental authorities for taxes?

A. True.

[fol. 1381] Q. In other words, of all of the underwriting profits before taxes as made in the year 1916 you paid 54.9 of that out in taxes?

A. True.

Q. And 45.1 per cent of that profit you had left for your stockholders?

A. True.

Q. And in the year 1917 your taxes consumed 139 per cent of your underwriting profit, did they?

A. True.

Q. And therefore the stockholders were minus 39 per cent?

A. True.

Q. In other words, they had to contribute 39 per cent of the tax figure in addition to their underwriting profit?

A. True.

Q. With that explanation, I will offer this in evidence, if the court please, to avoid the necessity of having the witness read it in detail.

Mr. Barker: I want to examine the witness before they go into evidence.

Mr. Folonie: You asked for the sheet. I am just asking his explanation to facilitate it.

Mr. Barker: I understand the practice. When I ask a witness to bring a paper I have a right to look at the paper and interrogate about it before I consent to its going into the record.

The Referee: I suppose either side may offer the sheet at any time.

Mr. Folonie: I might have produced it without producing any witness at all, under your request, but I am simply doing this for the illumination of the court.

The Referee: Mark the paper offered.

[fol. 1382] (Whereupon the document so referred to was by the reporter at the time duly marked "Plaintiff's Exhibit No. 800, Blume.")

The Referee: Let us not overlook the offer.

Mr. Folonie:

Q. Now, have you made a computation from your books and records of the amount of cash that has been paid in by stockholders since the incorporation of your company?

A. Yes.

Q. What is the capital stock in your company and what was it on December 31, 1921—is it the same figure now, or different?

A. It is different now.

Q. What was it on December 31, 1921?

A. It was two million dollars.

Q. What is it now?

A. Three million dollars.

Q. Now, up to December 31, 1921, when your capital stock was two million dollars, how much in cash had been paid in by stockholders as a direct cash payment by them into your company since its incorporation and organization?

A. Our capital only, or for capital and surplus?

Q. Both.

A. $3,750,000.

The Referee: That is since the date of organization?

A. Yes.

The Referee: And what was that date?

A. August 1, 1850.

Mr. Folonie:

Q. So that with a capital of two million dollars there had been paid in $3,750,000 in cash?

A. In cash.

[fol. 1383] Q. Making $1,750,000 paid in surplus besides being, paying in the entire capital stock?

A. As it stood at December 31, 1921.

Q. And since December 31, 1921, what has been done with respect to capital and surplus to the present time?

A. The capital was increased from two million to three million by a stock dividend of one million dollars.

Q. Leaving the capital at the present time at three million dollars?

A. True.

Q. And the total cash payments by stockholders applicable to capital and surplus $3,750,000?

A. True.

The Referee: When was that increase made—this last increase?

A. December, 1922.

The Referee: It might perhaps be material to know how much of that surplus out of which the stock dividend was declared was accumulated in the period ending December 31, 1921. That is the last of the five year period under investigation.

Mr. Folonie: In other words, what was their surplus at the beginning and end of that particular period?

The Referee: Yes, or how much of their surplus which was declared as dividends on the former stock——

Mr. Folonie (interrupting): Perhaps I can answer your question in another way of getting at the history.

Q. Go back to the organization of your company and tell us what your capital stock was originally and how much the stockholders paid in at that time.

Mr. Barker: Might I suggest, Mr. Lane went into that in detail?

[fol. 1384] Mr. Folonie: Go ahead and answer.

A. The company was organized in August, 1850, with a capital of $200,000.

Q. How much paid in?

A. All of it; $200,000.

Q. Now, what was your next?

A. In December, 1863, the stockholders contributed $300,000 more to capital.

The Referee: Capital then stood $500,000?

A. True. In October, 1864, the company was merged with the East River Insurance Company and the capital increased to one million dollars; the stockholders paying in by that merger $500,000 more. In December——

The Referee (interrupting): Then it stood at one million dollars, then. To what date?

A. Until the Chicago fire.

Mr. Folonie:

Q. Then what happened?
A. Then it was reduced to $500,000.

The Referee: What was that date?
A. December the 13th, 1872.

Mr. Folonie:

Q. In other words, by that time they had paid in $1,000,000 but reduced their capital stock then 50 per cent, down to $500,000, is that correct?
A. That is correct.
Q. Then what is the next step?
A. The San Francisco disaster, May 31, 1906.
Q. The capital remained at $500,000 up to that time?
A. True.
Q. Then what happened?
A. Then the capital was decreased by $250,000.
[fol. 1385] Q. In other words, they set off another $250,000 at the time of the Frisco fire?
A. True.
Q. Go ahead.
A. Then they increased the capital from $250,000 to $750,000, the stockholders paying in an additional $500,000, and also paying in $500,000 more to surplus.
Q. Yes. And then they paid at the time of that Frisco fire, they paid in $1,000,000 at that time; and what did they do with the capital stock of $250,000, leave it at that figure or increase it?
A. Increased it from $250,000 to $750,000.
Q. And paid in a million dollars in money?
A. Yes.
Q. Then what was the next step?
A. In December, 1909, the capital was increased from $750,000 to $1,000,000. The stockholders received a dividend of $250,000 and paid in that dividend to the increase of capital.
Q. In other words, there was a contemporaneous declaration of dividends and payment of the same amount into capital, is that true?
A. Yes.

The Referee: Equivalent to a stock dividend.
A. Yes.

Mr. Folonie:

Q. In other words, they had the same amount of money they had before but they had a larger number of shares of stock?

A. True.

Q. What next?

A. In December, 1920, the stockholders paid in $1,000,000 more in cash to capital, and then in December, 1922, the capital was increased by a stock dividend from $2,000,000 to $3,000,000.

[fol. 1386] Mr. Folonie: That finishes the line of examination I intended to ask this witness. If I haven't answered your inquiry, if the court please, you are quite free to interrogate him.

The Referee: You have covered it entirely.

Mr. Folonie:

Q. Have you prepared a true and correct tabulation from the books of your company of the net losses—of the net premiums written, premiums earned, incurred losses, underwriting expenses incurred, from 1903 to 1922?

A. I have.

Q. Do they appear on this sheet that I hold in my hand?

A. Yes.

Q. And have you on the sheet thereto attached made a statement of the principal conflagration losses from 1903 to 1922 and the amounts of the payments by your company in those conflagrations?

A. Yes.

Q. And have you made a calculation from these two sheets of the proportion which those conflagration payments of your company during that period bore to the written premiums and the ratio it bears to earned premiums?

A. Yes.

Q. As I understand, these figures relate to the experience only of your own company?

A. That is correct.

Q. And these are only outstanding conflagrations, are they?

A. The larger ones, yes.

Q. In other words, there are some conflagration figures of comparatively small amount missing out of your figures?

A. Yes.

Q. These are the outstanding ones.

[fol. 1387] The Referee: Are you using the term "conflagration" there, Mr. Walsh, in the sense in which it has heretofore been used in this investigation, as indicative of losses at least amounting to $1,000,000?

A. No, sir; not exactly. I am not sure whether these individual losses all amounted to $1,000,000, but they are——

The Referee (interrupting): You are using it in the general sense?

A. Yes.

Mr. Folonie:

Q. Your books and records of your company do not enable you to say what the amount of the losses of all the companies were at any particular location where a fire occurred, and for that reason you are unable to answer the court's questions with certainty as to the amount of the losses at those locations?

A. That is correct.

Q. That is, these that you have listed were fires, however, of large proportions?

A. Yes.

Q. And from general information and understanding now that this is not subject to verification by you, but from your information are these fires such that you believe them all to be in excess of $1,000,000?

A. I couldn't say that, but most of them are, certainly.

Q. Well, now, you have listed here 14 of them. Now, will you tell those that you can with reasonable certainty say were losses in excess of this, and those that you don't know about?

A. Baltimore, more than $1,000,000; San Francisco, more than $1,000,000; Chelsea, Massachusetts, more than a million dollars. I am not sure about Bangor, Maine. Salem, Mas-[fol. 1388] sachusetts, I should say was more than a million dollars. I am not sure about that. You see, I am not an underwriter. Augusta, Georgia, I am not sure about that. Blacktown Island, I don't know about that. Atlanta,

Georgia, I think so, though. Morgan, New Jersey, I think so. Northwestern Minnesota, I think so. Augusta, Georgia, I think so. Arverne, New York, I think so. Astoria, Oregon, I think so.

Q. Now, this list of the principal conflagrations was prepared by Mr. Steel, your vice-president, before he left the city, was it not?

A. Yes.

Q. And you have taken over the list since he left the city, made your calculations and verifications from your books?

A. Yes.

Q. He was called away by business and could not appear here as a witness?

A. That is true.

Q. What is the ratio of the losses on those conflagrations to the written premiums of your company for the period indicated?

A. 3-1/3 per cent.

Q. What was the ratio to earned premiums?

A. 3.61.

Q. 3.3 as to written premiums?

A. 3.6 as to the earned premiums.

Q. 3.3 as to written premiums and 3.6 as to the earned premiums?

A. Yes, sir.

The Referee: Ratio of losses?

Mr. Folonie: Ratio of the payments on these conflagrations of this company to its premiums written, and also [fol. 1389] computed to their premiums earned. The premiums are set out in detail here by years, if the court please, and the losses and the expenses of each year, so as to arrive at both the written and incurred basis of computation.

We offer the paper in evidence.

(Whereupon the document so referred to was by the reporter at the time duly marked Plaintiff's Exhibit No. 801, Blume.)

The Referee: It has been offered, but the offer has not yet been ruled on.

Cross-examination by Mr. Barker:

Q. Your name is what?

A. Walsh.

Q. Mr. Walsh, your conflagration experience, then, covering the period from 1903 to 1922 indicates that your company has paid substantially 3 per cent of the premiums received by it in payment of its shares of these conflagrations.

A. True.

Q. Therefore, your experience would teach you that if it only costs you 3 per cent to take care of your conflagration liabilities covering that entire period, which is substantially 15 years, that 3 per cent would be a reasonable amount to be considered by insurance companies as a conflagration reserve?

A. I wouldn't say that.

Q. You would like to have more than that, would you?

A. I don't think that fifteen years is a long enough period.

Q. Oh, I see. Do you care to make me one from the time your company was organized, to see what that experience would be on that?

A. I don't think we have the figures available.

[fol. 1390] Q. In other words, the conflagration hazard amounted to practically nothing during those fifteen years, to your company?

A. I don't agree with that.

Q. Seven per cent—three per cent. Now, during that same time that your conflagration hazard from 1903 to '22 amounted to 3 per cent you returned on an average how much to your stockholders each year?

A. I couldn't tell you what the average is.

Q. Why not?

A. Well, I haven't figured it out.

Q. Well, but if you can figure the average of a conflagration hazard you can certainly figure the average paid your stockholders, can't you?

A. Yes, but to do it without time—I can tell you what our stockholders received.

Q. All right. Take each year for me in this period in question only, then from '16 to '22—if that will shorten it any. Have you that handy?

A. Yes.

Q. All right. What would you say your stockholders in 1916, in the way of a dividend, received? What did you pay your stockholders in 1916?

A. $250,000.

Q. Against a capital of what?

A. One million dollars at that time.

Q. Well, what percentage is that?

A. 25 per cent.

Q. Did you add anything to your surplus account or pay any extra stock dividends or bonuses during that year?

A. During the year 1916?

Q. I think that is the one I asked you about.

A. Our surplus increased from $2,799,000 to $3,065,000. [fol. 1391] Q. Well, how much of an increase was that in your surplus—substantially?

A. Well, it was about $265,000.

Q. Against a capital of $1,000,000?

A. Yes.

Q. Well, that is substantially 50 per cent, then, that year, is it?

A. Substantially, yes.

Q. Now, as against a 3 per cent hazard, that hazard was nothing, was it?

Mr. Folonie: We object to trying to compare 3 per cent on the premiums to 50 per cent on the capital, which are not at all comparable for you can't deduct 2 per cent from 50 per cent and say you have 48 per cent left when you are computing them on two different things.

Mr. Barker: Oh, very well. Withdraw that.

Q. Take your 1917, how did you stand that year?

A. We paid dividends of $250,000 on the capital of $1,000,000.

Q. Again, 25 per cent?

A. True.

Q. What in the nature of extra stock dividends, bonuses or additions to surplus?

A. Surplus declined then by $148,000, so that reduced the dividend to practically 10 per cent.

Q. What did the stockholder receive, then, 10 per cent or 25 per cent?

A. The stockholder actually received 25 per cent.

Q. That is what I asked you. Now, take 1918.

A. $250,000 cash dividends.

[fol. 1392] Q. 25 per cent. What in addition in extra stock dividends and so forth?

A. Surplus increased by $191,000.

Q. Substantially 20 per cent?

A. True. That is the surplus.

Q. So that substantially 45 per cent——

Mr. Folonie (interrupting): No, he said 20 per cent.

Mr. Barker: And the 25 per cent makes substantially 45.

Mr. Folonie: You deducted the other time so don't add it to this year.

Mr. Barker: I will deduct, then, and add them for you and give you the result in just a minute.

Q. Now, then, 1919?

A. $250,000 dividends, with an increase in surplus of $266,000.

Q. That is substantially more than 25 per cent addition to surplus that year?

A. Correct.

Q. Now, take 1920, please.

A. Dividends, $250,000.

Q. How about your surplus account or extra dividends?

A. $353,000 increase in surplus.

Q. 35 per cent?

A. Increase in surplus, yes.

Mr. Folonie: When you say 35 per cent increase in surplus, do you mean 35 per cent compared to the capital, or do you mean the surplus increased 35 per cent of its own former figure?

A. I mean, and I assumed the question to mean, that it relates to capital; that we are figuring the percentage all the time on capital.

Mr. Barker: That is right.

[fol. 1393] Mr. Folonie: You are not undertaking to apportion the surplus increases as related to itself?

A. No.

Mr. Barker: Just as to capital.

Q. 1921, now, how do we stand? Made 25 per cent?

A. No, $400,000 on $2,000,000 capital; that is 20 per cent.

Q. How about your addition to surplus and extra dividends?

A. There was no addition to surplus in '21—oh, pardon me. Yes, there was. There was an addition of $293,000 to surplus in '21.

Q. 15 per cent?

A. About that.

Q. Now, 1922, please?

A. $400,000 dividends.

Q. 40 per cent?

A. Well, yes; the capital was $2,000,000 until very nearly the end of the year.

Q. All right that will be close enough. How about your additions to surplus?

A. There was a million dollars added onto surplus—oh, additions to surplus—no, there was a decline in surplus that year.

Q. In '22?

A. Yes.

Q. How much?

A. $262,000.

The Referee: Mr. Walsh, during this period do the increases in capital and surplus and the dividends cover all of the financial benefits flowing to the stockholders?

A. To the stockholders, yes. I can——

The Referee (interrupting): And do the subscriptions or increase of capital pay the entire—the subscriptions or increase of capital paid in by the stockholders and the reduction in amount of surplus show all the financial losses to the stockholders during that time?

A. I think so, yes.

[fol. 1394] The Referee: Or contributions by the stockholders?

A. I think so. I am referring to the statement, there, particularly.

The Referee: I am referring to the document about which you were interrogated just now.

Mr. Barker:

Q. Now, then, Mr. Walsh, during 1919 you paid a 25 per cent dividend. At the same time you added 25 per cent of your capital to your surplus. Right?

A. That is right.

Q. During that same year I find that on your investments you sustained a loss, a net loss. Is that right?

A. Yes, we sustained a net loss.

Q. Yet, in sustaining a net loss on all of your investments in the year 1919 you were able to pay a 50 per cent stock dividend—in substance? That is, a stock dividend of 25 per cent in addition to surplus of 25 per cent. How do you explain that, with a loss on your investments that year? Where did you get that money?

A. I didn't know we paid any stock dividend that year.

Q. I will ask it again. I have marked you down as saying you paid to your stockholders a dividend of 25 per cent in 1919.

A. To our stockholders, but not a stock dividend.

Mr. Folonie: The word profit and gain has been differently used by the witness and counsel.

Mr. Barker: I haven't used either one of them.

Mr. Folonie: Yes, you did. You asked if he didn't have a net loss from investments that year; was in fact a gain on the investments for that year.

[fol. 1395] Mr. Barker: You may testify if you want to. Goes to the contrary.

Mr. Folonie: Is that so?

Mr. Barker: Yes, sir.

Q. Did you have a net gain or loss on your investments in 1919?

Mr. Folonie: On the whole investment account for that year.

Mr. Jacobs: Let the witness testify, Your Honor.

A. A net loss.

Mr. Barker: Your net loss in 1919 on all your investments was 18 per cent? Right?

A. I haven't figured out the percentage.

Q. So getting back, again, you paid a dividend to your stockholders in '19 of 25 per cent. Right?

A. Correct.

Q. You added to your surplus account $250,000 or 25 per cent. Right?

A. Correct.

Q. Explain to the commissioner how with a net loss on all of your investments in 1919 you were able to pay a dividend of 25 per cent and set aside 25 per cent to your surplus account.

A. Well, we have been in business for 70 years and I presume we had earned a good deal of that dividend in prior years.

The Referee: That money earned, then, in previous years was in the surplus account?

A. Yes.

Mr. Barker:

Q. Did you decrease your surplus again in 1919, then, and create this 25 per cent surplus to pay stockholders?

A. No, we did not.

[fol. 1396] Q. Then you did not take it out of surplus. Where did you get it?

A. I presume from the profits of the business.

Q. But you had a loss on your investments, you told me.

A. That is right.

Q. Then you didn't have any profit?

A. Oh, no. We earned two kinds—we have two kinds of relations in the business, both the underwriting and the investment.

Q. Then if you made a loss on your investments in 1919 you must have earned that amount on your underwriting profit of 1919?

A. I presume so.

Q. Well, I would rather you would not presume unless you have to, Mr. Walsh. You understand these figures and prepared them, didn't you?

A. Yes.

Q. Then it is not necessary for you to presume. You know, don't you? If you don't know you may presume, but if you do know I would rather you would tell me.

A. Well, if the profits might have come from one of two sources or from both sources, and if there was a loss on one there must have been a profit on the other, if there was a net profit. It stands to reason.

Q. Can you ascertain from your books whether or not in fact on the underwriting activities alone in 1919 you

made a profit sufficient to pay your stock holders 25 per cent on the capital stock and to set aside to your surplus fund 25 per cent of your capital stock? Can you ascertain that?

A. Yes.

Q. Have you the papers in front of you that will show it?

A. No, I haven't.

[fol. 1397] Q. Well, as a matter of fact, it must have come from the underwriting experience, there being a loss in investments?

A. Yes, that is true.

The Referee: Mr. Walsh, would the losses arising from the investments in that year be deducted from the surplus then on hand?

A. I don't understand you.

The Referee: Well, leaving all other factors aside, considering solely the fact that you made a loss on your investments of that year, now leaving out of consideration any profits arising from the underwriting end of the business, would that loss be reflected by reduction of surplus corresponding to the amount of the loss on the investment end of the business?

A. True, if we had not done any underwriting business.

The Referee: The dividend to the stockholders, then, plus the addition to the surplus, must have been paid out of the profits of the underwriting business?

A. The dividends to the stockholders plus addition to the surplus in that year?

The Referee: Yes.

A. Yes, I should think it must. If there was a loss on securities.

The Referee: Then was the total surplus increased for that year 25 per cent over what it had been during the preceding year?

A. Not 25 per cent over what it had been, but it was 25 per cent on the capital.

The Referee: Surely. And that is the addition to surplus in that year was 25 per cent of the capital?

A. True.

The Referee: Then the losses on the investment end were also compensated by the profits received from the under-

[fol. 1398] writing end of the business during that year, were they not?

A. Must have been in that year.

The Referee: That is all.

Mr. Barker:

Q. Now, your investments in some instances are in stocks of industrial corporations?

A. Some of them, I think, yes.

Q. You invest in some securities which are wholly unlisted?

A. Unlisted where?

Q. Upon the stock markets of the world.

A. I don't know of any.

Q. You don't know of any?

A. No.

Q. Your directors have the right to invest their money in any securities they see fit?

A. I don't think so.

Q. What limitation?

A. I think there are certain limitations under the laws of the states.

Q. Only to the extent, then, that they are limited by the law?

A. I should think that was true, yes.

Mr. Barker: I believe that is all.

Redirect examination by Mr. Folonie:

Q. One question I omitted on my direct examination. I will ask the privilege of asking about it now. Have you made a computation of the amount of the expense arising out of the investment activity of your company for any period?

A. Yes.

Q. And have you made a calculation as to what percentage or part that investment expense is of the earned premium figure? In other words, what relation it bears to the earned premium earnings of your company for that corresponding period?

A. Yes.

[fol. 1399] Q. Give us that computation.

A. It is about 1/50 of 1 per cent of the earned premiums.

Q. And is that fairly representative of what that amount runs over a period of years?

A. I believe so.

Q. And in your judgment is that fairly representative of what such expense is with companies in general?

A. Yes, I think so.

Mr. Folonie: That is all.

The Referee:

Q. Now, if I understand it, that means that 1/50 of 1 per cent of the earned premiums defrays the expenses of the investment end of the business?

Mr. Folonie: That is correct.

The Witness: A. 1/50.

The Referee: That is what I said.

Recross-examination by Mr. Barker:

Q. Just one question, Mr. Walsh, with reference to the expenses of your investments. At the end of the year in your company you total together all of the expenses of your company, find out what the expense account is for that year?

A. True

Q. And include in that general statement of expense the underwriting and the investment end of the business?

A. Yes.

Q. And then that is apportioned to the different states in proportion to the volume of business which they produce?

A. When the states call for it, yes.

[fol. 1400] Q. Yes, and that is the method of charging the states with what you call the overhead expense?

A. That is the way it is usually done, yes.

Mr. Barker: That is all.

Mr. Folonie:

Q. And then in your annual statements to the states what proportion of the mean invested assets are charged to underwriting as an investment expense?

A. 1/8 of 1 per cent.

Mr. Folonie: That is all.

Mr. Barker:

Q. And the states naturally pay their proportionate part of your investment expense?

Mr. Folonie: We object to that assumption as being purely contrary to what he has just said. He said they deduct out 1/8 of 1 per cent.

The Referee: Is that 1/8 of 1 per cent deducted—for what purpose?

Mr. Folonie: The mean invested asset is taken out of the general expense in computing the underwriting figure to eliminate from it the expense of the investment part of the business.

The Referee: I understood the witness to say a moment ago—there may be a confusion of bases there——

Mr. Folonie (interrupting): They put in all their overhead in the computation of their figures in their annual statement, and then, they deduct, under the underwriting part of it, 1/8 of 1 per cent of the mean invested assets and charge it to the investment part of the business and credit it to the underwriting department.

[fol. 1401] The Referee: Let's avoid any confusion on that, now. A few moments ago I understood you to say that the expense, investment expense, amounted to 1/50 of 1 per cent of the earned premium.

The Court: Correct.

The Referee: Now, this 1/8 per cent of which you just now spoke is calculated from what basis?

A. From the mean invested assets of the company.

The Referee: What do you mean by the "mean invested assets?"

A. We take the invested assets at the beginning of the year and the invested assets at the end of the year and divide by two to get the mean. And then we take 1/8 of 1 per cent of that mean, and consider that. We are required

to do that by the annual statement form which the various states furnish us, and we consider $\frac{1}{8}$ of 1 per cent of the mean invested assets as that portion of the expenses of the company which are or which represent investment expenses. That is then deducted from the underwriting portion of the underwriting and investment exhibit.

Mr. Folonie: Charged to investment?

A. Yes, and credited to underwriting.

Mr. Folonie:

Q. Then if you put all of your overhead expenses into the underwriting item this operates to take that much of it out again?

A. Yes.

Q. Does that $\frac{1}{8}$ of 1 per cent of the mean invested assets, if applied—if that same figure were applied to your earned premium—that amount so deducted were applied to your earned premium figure, would it be within this 1-50 of 1 per cent about which you have testified?

[fol. 1402] A. It would be about 1-50 of 1 per cent of the earned premiums.

The Referee:

Q. So that in calculating the expense of the investment end of the business by either method you reach the same result?

A. Yes. You reach 1-50 of 1 per cent of the earned premium.

Q. Or $\frac{1}{8}$ of 1 per cent of the mean investments?

A. That is right.

Mr. Folonie:

Q. Those two would come to the same amount in dollars?

A. Yes, sir.

Q. Just percentages of different things?

A. Yes.

The Referee: That is just what I am getting at.

Mr. Folonie:

Q. Will you turn to the page of the blank where that appears?

Mr. Barker: You are going to mix up my examination tremendously if you don't let me finish the cross.

Mr. Folonie:

Q. And call the court's attention to where that 1/8 of 1 per cent is shown?

A. On page 10 of the annual statement, under the head of "underwriting expense" is a total of $3,813,268.95. Those are the actual paid underwriting expenses of the company. We are instructed in the blank which is furnished to us by the state, and we have to do it, to deduct from that 1/8 of 1 per cent of the mean invested assets of the company. In this particular case 1/8 of 1 per cent amounted to $50— amounted to $15,948.14. We thereby reduced our underwriting expense by that sum and charged that equivalent amount, which is over here on the other side, to investment expenses.

[fol. 1403] Q. On page 10, as you have it here before you, you have this figure of $3,813,000, with the $15,900 immediately below it, and then the balance of $3,797,000 carried out under "underwriting expenses," line 23, of page 10.

A. True.

Q. Then on the other side over here you have that same figure of $15,949——

A. (Interrupting.) Under the head of investment expense.

Q. And that is line 48 of page 11 of the statement. That is on the page where the caption appears, "investment exhibit"?

A. Yes.

Q. And the page you had a moment ago is on page 10, entitled "underwriting exhibit"?

A. True.

The Referee:

Q. Have you the calculation before you there based on the 1.50 of 1 per cent proportion?

A. Yes.

Q. What is that yield?

A. It yields a little less than 1.50 of 1 per cent. Our net premiums during the year were $8,852,000. Now, 1 per

cent upon that would be $88,000. This is—pardon me. This is $15,000. That would be—it should be—I made a mistake, I see, in saying 1/50 of 1 per cent. It is 1/5 of 1 per cent.

The Referee: Well, with that correction how do the amounts in dollars compare?

A. The amounts in dollars are just the same.

The Referee: Q. Just the same?

A. Yes. In each case it is $15,948.

Mr. Folonie:

Q. Now, you better make your calculation a little bit leisurely and see. I think you have got yourself wrong [fol. 1404] again, Mr. Walsh. Take your pencil and figure it out. Take your time.

Mr. Barker: Have you got the report of 1920 there with you?

A. No, only '22.

Mr. Barker: Have you got 1921?

A. No.

(Witness makes calculation.)

Mr. Folonie: The witness has checked over his own computation.

Q. Now, Mr. Walsh, will you state now whether 1/5 or 1/50?

A. 1/5 of 1 per cent. Instead of 1/50.

Mr. Barker:

Q. Now, Mr. Walsh, I was asking you this question when the interruption occurred: Whether or not——

The Referee (interrupting): Pardon me one moment. I want to clear up a matter right here in connection with this 1/5 basis. I understand that the entire expenses of the investment end is 1/5 of 1 per cent—of the annual premiums—and the amount required to be stated in the blank form for reports furnished by the state is 1/8 of 1 per cent on that same basis?

A. Not on the same basis, no. It is 1/8 of the mean invested assets.

Mr. Folonie: 1/8 of 1 per cent, you mean.

The Referee:

Q. But the result is the same?

A. It is in this individual year. It will depend on the earned premiums, of course.

Q. The result would not necessarily be the same in every year?

A. No; probably be pretty close, though.

The Referee: Proceed, General Barker.

[fol. 1405] Mr. Barker (resuming recross-examination):

Q. I was asking you, Mr. Walsh, whether or not at the end of the year you figured up the general expense of your company as a whole, including the underwriting and investment activities?

A. We do, yes.

Q. And then, having found out what your entire expense is, underwriting and investment, you apportion that to the states in proportion to the volume of business which they produce?

A. Only where the states ask for it.

Q. Well, in Missouri you do, do you not?

A. We do in Missouri.

Q. So that as I stated before when I was interrupted, Missouri pays her proportionate part of that investment expense—no argument about that at all, is there?

Mr. Folonie: We object to that, because he has already stated, when he asked about their paying it—payments are made on tax statement and he has not interrogated him about that at all; and as far as the annual statement is concerned, and as far as that is a predicate, the portion of the expense attributable to investments, he has already stated, is deducted out.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Now, read the question, Mr. Blume.

(Question read by the reporter.)

A. I would like to know just what statement you are referring to, as far as Missouri is concerned?

[fol. 1406] Q. Mr. Folonie has referred to the statement, not me. I want the fact. Disregard every statement of every kind that you can think of and tell me whether or not Missouri pays her proportionate part of the expenses of your investment activities.

Mr. Folonie: We object, because if you disregard every statement they make, Missouri wouldn't pay anything at all. It is only on the statements that there is any computation of any kind. We object to the question as defeating itself.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I am not clear as to what you mean. We file this statement with Missouri, which tells its own story. A copy of this identical page has been filed with Missouri.

The Referee: Mr. Walsh, without respect to the statement, consider the fact as to whether or not Missouri pays any part of the expense inquired about.

Mr. Folonie: We respectfully renew our objection made to counsel's question to that propounded by the court.

The Referee: Which is respectfully overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 1407] A. I don't know whether Missouri pays any part of the expense at all. I really think Missouri does not, because I think it is unprofitable.

The Referee: According to the books of the company and the examination that you have made, what is your belief with respect to that matter?

A. The statement which we filed with Missouri, which contains an apportionment of expenses, was based upon the paid expenses without deduction of anything for investment expenses.

Mr. Barker:

Q. Then Missouri pays her part, as I stated?

Mr. Folonie: We object to assuming Missouri pays anything as illogical and contrary to the fact, and because the business there has been conducted at a loss, and because it is confusing and indefinite in its nature.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: I know, and Mr. Folonie has kept the witness from answering at least five times now.

Mr. Folonie: I will altogether if I can, because I don't think he should answer it at all.

Mr. Barker: Every witness who has testified up to the time of this hearing has admitted without any question the reports show that all the expenses are allocated to the state, including investment expenses. Now, when I ask this witness the question which has been testified to, for the purpose [fol. 1408] of identifying his company, Mr. Folonie states it is improper.

Mr. Folonie: They have all stated the investment item is taken out exclusively by the deduction of $\frac{1}{8}$ of 1 per cent.

Mr. Barker: Just allow me three minutes without interruption and we will find out.

Q. Mr. Walsh, in 1922 you estimated your investment expenses at about $15,000?

A. Correct.

Q. That means that in 1922 you estimated that it cost you about $15,000 to handle your investments for the United States?

A. When you say estimated, I don't agree with you there, because we followed the directions of the State of Missouri and the annual statement, which told us just how to do it. They estimated it.

Q. Well, then, it is an estimate. That is what I mean. I was not impugning to you as making the estimate, but somebody somehow, somewhere has estimated and you have followed it, that cost you about $15,000 to handle your investments in 1922?

A. Correct.

Q. Now, in your report which you have in your hand you estimate that—or perhaps I shouldn't use that word—you place figures in there of substantially $15,000 in your report to Missouri?

A. Correct.

Q. As to the amount of expenses in handling your investments in 1922.

A. Correct.

Q. That is put in there as a charge against Missouri?

[fol. 1469] Mr. Folonie: We object to asking—assuming it is any charge against Missouri, because it is charged in one place and credited in the other and the investments being no part of the charges, in the rate in Missouri, it is not comprised in it but eliminated.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiff, by counsel then and there at the time duly excepted and still except.)

Mr. Barker: I haven't finished the question. Just wait until I finish the question, and then we will understand it.

Q. (Continuing:) Then the $15,000 item which you showed Mr. Folonie in your report, which you hold in your left hand, of the Missouri Insurance Department, showing the figures of $15,000, representing the expenses of your investments in 1922, those figures put in the statement for the purpose of charging to Missouri her proportionate part of that $15,000 are they?

A. They are not put in the statement for any such purpose, no.

Q. Then they are put in solely because the blank itself provides that you shall figure them?

A. That is the only reason.

Q. What you mean, I assume, then, is this: That your expenses in 1922 being substantially $15,000 for handling in-

vestments, that is figured as a general expense of your company along with its other expenses, that is an expense, is it, I mean?

[fol. 1410] A. That is an estimate made by the State of Missouri and other states of the investment expense.

Q. And you accept it as a statement of your investment expense?

A. We have to make it out in this form.

Q. And you do do it?

A. Well, the statement would not be accepted unless you did.

Q. And it is then charged as a part of the general expenses of your corporation for that year?

A. It is charged and credited, so the result is nil.

Q. That is, in your general expenses you show that it costs you substantially $15,000 to handle your investments, do you?

Mr. Leahy: That item speaks for itself Your Honor, whatever it is. It is in evidence; calculation of this witness.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. That item appears only on one page of the annual statement. It appears in two places. It is credited in one and debited in the other. If it was left out it would not make a bit of difference so far as the balance is concerned. We are compelled to do it by the requirements of the blank, which gives directions, which I will be pleased to read to you.

Mr. Barker:

Q. I understand that. Read the question to him again, Mr. Blume.

(Question read by the reporter.)

[fol. 1411] A. We show that that is the estimate required that we should put in the blank, which we put in.

Q. Then let's get the actual figures, then. How much did it cost you to handle your investments in 1922, if you are not willing to accept the estimate?

A. We don't know.

Q. You can find out, can't you?

A. No, I couldn't tell how much of the directors' or president's time was spent on investments. I don't know. It is very insignificant.

Q. Well, but whatever time the directors or presidents do spend, that much of their time is taken away from the underwriting activities?

A. That is correct.

Q. And they are paid a salary from the company, which receives its money in both ways?

A. True.

Q. Therefore their—they are performing both underwriting services and investment services, eh?

A. True.

Q. And there is no separation between that officer or director's salary, is there?

A. Not as far as I know, no.

Q. The business is one business, not divided between the activities of the officers in the underwriting and the investment?

A. It is one business, true.

Q. Do you know how much time the president, for instance, devotes to the underwriting and how much to the investment?

A. I think the percentage of time that he devotes to investment is so insignificant that it is hardly worth mentioning.

[fol. 1412] Q. Take for instance the stamps that go out in the purchase or sale of securities, they are paid by your company out of its general fund?

A. The stamps?

Q. Yes.

A. Oh, yes.

Q. The stenographer that happens to write one letter about an investment, one letter about an underwriting activity, her salary is paid out of the general fund?

A. True.

Q. No separation made for services on the underwriting end and the investment end?

A. True.

Q. Then when you apportion your general expenses to the State of Missouri, Missouri pays her proportionate part of that stenographer's time for working on both activities, does it not?

Mr. Folonie: We object to the assumption that anything is charged to Missouri, if the court please. There isn't anything charged to Missouri at all on the books.

The Referee: Overruled.

(To which action and ruling of the referee plaintiff by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. When we apportion our general expenses upon the blank furnished to us by Missouri for that specific purpose there are included in the overhead those expenses.

Q. And Missouri pays her proportionate part of it?

[fol. 1413] Mr. Folonie: Object to assuming Missouri pays anything.

Mr. Barker: I am not assuming. I am stating as a fact—asking you not to assume anything. Isn't it a fact that Missouri does do it?

A. I don't think she does.

Q. All right; then; we'll see. Now, Missouri has what is called direct expenses—or does it not?

A. True.

Q. Now, what is a direct expense in Missouri?

A. Commissions and taxes and similar expenses.

Q. Right. Then your company has what you call a general overhead expense every year, does it?

A. Correct.

Q. Now, is it true or is it not true that of that general overhead expense a certain part of it is apportioned to the different states of the Union in accordance with the volume of business which they produce?

Mr. Folonie: I object to it as indefinite, because it doesn't ask whether apportioned on the books or with the

report filed in the State of Missouri, and therefore any answer the witness might make might be misleading.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

[fol. 1414] A. It is apportioned on the statements which we render to the State of Missouri.

Q. And charge to that state?

Mr. Folonie: Object to the conclusion that it is charged to anybody by the rendition of such a statement.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. If by the word "charged" you mean the same as the word "apportioned" in that particular case, we do put it on the blank in that form.

Q. Now, how do you apportion to Missouri and why do you apportion, your overhead expense to Missouri?

A. Because we are compelled to do so by the request of Missouri.

Q. And that is your only reason for doing it?

A. It is the principal reason for doing it, yes.

Q. Your idea is, then, that Missouri should not be charged with any of the overhead expense but only with its direct activities, is that right?

A. That is not correct; no, that is not right.

Q. Then do you want to charge Missouri with her part of your overhead expense?

Mr. Folonie: We object to assuming Missouri is to be charged with anything by anybody as a misleading conclusion.

The Referee: Overruled.

[fol. 1415] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. I should think she should be charged with her part of the overhead.

Mr. Barker:

Q. Well, is she charged?

Mr. Hogsett: That is objected to as repetition. You are quibbling over the term "charged." The witness has explained that if you use that term in the sense of "apportion" she is charged, and you know she is charged because you have had this blank in evidence. Why quibble over that?

Mr. Baker: I deny I am doing any quibbling.

Mr. Folonie: All the overhead is apportioned to Missouri and then 1/8 of 1 per cent is taken out.

Mr. Barker: Does Missouri pay her proportionate part of your investment expense?

Mr. Folonie: Object to the form of the question.

Mr. Barker: There you are. Who is quibbling now? Mr. Hogsett says she pays and you say she don't.

Q. Does she pay or does she not?

A. I don't think she does, because the business is conducted at a loss, I think, in Missouri.

Q. Explain that.

A. I think the premiums ought to be increased in order that she might pay.

Q. Then you think she should pay in Missouri?

A. Yes.

[fol. 1416] Q. And the reason she don't pay is that you haven't received enough money from the state?

A. I think that is so. I am not very familiar with those facts, but I think that is general knowledge.

Q. But as a bookkeeping entry, a charge is made against the State of Missouri?

A. It is made on the statements we render to Missouri.

The Referee: Is it made on the books of the company?

A. Not on the general books of the company, no. Many companies don't keep such accurate state statistics as this general——

The Referee (interrupting): I have the impression derived from what you have said, Mr. Walsh, that neither the calculation made on the 1/5 of 1 per cent basis about which you were testifying a few moments ago, nor the calculation made on the 1/8 of 1 per cent basis directly reflects the portion of the expense of the investment end of the company's business as allocated to Missouri. Am I correct in that, or not?

A. We don't know what the actual expenses on investments are. That calculation that I made was based upon what Missouri estimates those expenses to be.

The Referee: Well, then, do I understand you to mean that both of those calculations whether on the rate of 1/5 of 1 per cent or 1/8 of 1 per cent are purely arbitrary estimates?

A. Made by the insurance commissioners in their blanks. [fol. 1417] The Referee: I don't care by whom made. Are they arbitrary assumptions or not?

A. Yes, I think so.

The Referee: And may or may not—you are unable to say—reflect the truth as to the expense of the investment end of the business? Is that correct?

A. They may or may not. I don't know whether it is more or less.

Mr. Folonie: Is there any way to ascertain or keep track of what part of his time the president puts in on the investment end of the business by buying securities and so forth?

A. No. It would be impractical. It is very slight, anyway.

Mr. Folonie: It is your judgment this amount you mention is ample to cover such service?

A. I think so, yes.

Mr. Folonie: That is all.

Mr. Barker (resuming cross-examination):

Q. Now, Mr. Walsh, let us assume that in the state of Missouri for a given year, say '21 will do—that your company received $10,000 for the payment of insurance policies from the state. Let us assume that you have losses in Missouri of $6,000, which you pay. Let us assume that your expenses in Missouri are $5,000, showing losses and expenses, of $11,000, and an income of $10,000. Necessarily you would have a loss of $1,000 in that state that year?

A. That is true.

Q. Now, in addition to that loss of $1,000 on the direct business in Missouri do you apportion to Missouri [fol. 1418] any part of the expenses of your company for its general activities throughout the United States.

Mr. Folonie: We object, because the question is misleading and because it does not specify whether asking about the books of the company or the statements rendered to the state of Missouri.

Mr. Barker: Mr. Hogsett says the witness has answered it.

Mr. Hogsett: When did I say that?

The Referee: Just a minute. The referee assumes this witness is capable of discriminating in his answer so as to state the truth; and the objection is overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: May I disavow any intent of intimating that the witness would in any way speak an untruth? I merely meant to convey the idea that the question as interrogated if specifically answered, to state yes or no, would necessarily be misleading, because it would not indicate to what record, paper or instrument it referred.

The Referee: Yes or no answers have been so infrequent in the course of this hearing that that danger is practically negligible.

Mr. Barker: Mr. Folonie repeatedly tells the witness when I asked him the question a lot of assumptions and things not in the question so that the witness won't answer the question. Now, the question is a very simple one and I want the witness to answer it.

[fol. 1419] The Referee: The objection has been overruled.

Mr. Barker: Read the question then, Mr. Blume.

(Question read by the reporter.)

The Witness: Are you referring to the general statistics of our company?

Q. Well, I don't exactly understand what you mean by statistics. I mean the general activities, general expenses. I don't know what you mean by statistics, exactly.

A. Well, we furnish Missouri with a statement in accordance with their request in which we furnish them with an apportionment of those expenses. If that is what you are referring to, why, we do that.

Q. Take your '22 book, how much did you apportion to Missouri outside of Missouri's direct expenses? Have you got it there?

A. This statement of the company's has no specific relation to Missouri as a state. It is for the whole United States.

Q. But you haven't your Missouri blank in front of you?

A. No, but it is identical with Missouri. This is a photograph of the individual one, but it doesn't pertain to Missouri; it is not Missouri business only.

Q. Then this charge of fifty——

The Referee (interrupting): I think we will make better time if two things might be done: Unnecessary interruptions avoided, and if the witness, as all witnesses should desire to do, carefully understand the question and then answer that question and not any other.

Mr. Barker: He can't do it. Mr. Folonie suggests other questions to him every time I ask him one.

[fol. 1420] Mr. Folonie: We object to counsel's comment.

Mr. Barker:

Q. Then the item of $15,000 which I understood you to say to Mr. Folonie was noted on the Missouri blank—you simply mean that is noted on the blank of every state in the Union, including Missouri?

A. I do.

Q. So that every state in the Union, regardless of the volume of business produced, is charged with substantially $15,000 investment expense?

A. Oh, no. That conclusion is wrong.

Q. Why is it wrong?

A. Because this is a statement of the entire operations of the Niagara Fire Insurance Company, a copy of which is sent to every state in the Union. The entire operations involve this $15,000 for investment expense. It is not $15,000 charged to every state to whom we send the statement. This $15,000 is $15,000 charged to all of the states combined.

Q. Then what part is charged to Missouri?

Mr. Folonie: We object to assuming any part is charged to Missouri, because nothing is charged to Missouri and there is nothing in the witness' answer indicting that.

Mr. Barker:

Q. Now, since Mr. Folonie has again told you how to testify, please listen to Mr. Folonie carefully.

Mr. Folonie: I object to that statement, that I have told the witness how to testify.

Mr. Barker: Read the question, Mr. Blume, and see if Mr. Folonie can tell him again.

[fol. 1421] The Referee: Read the question.

(Question read by the reporter.)

The Referee: Assume, in answering that question, Mr. Witness, if you prefer, that the word "apportioned" is used intstead of "charged" by the general.

A. Well, it would be possible theoretically to apportion to Missouri a portion of that $15,000 under any plan of apportionment that you might desire to apportion.

The Referee: That is not the question that was asked. The question asked was in substance whether or not any portion of that particular sum is in fact apportioned to Missouri.

A. Not on the general books of the company. It is on the form which we send and which Missouri specifically asks for, a form differing from this one here.

Mr. Folonie: That is the underwriting statement you are talking about now?

Mr. Barker:

Q. What is that?

Mr. Folonie: The underwriting statement.

Mr. Barker:

Q. You understood Mr. Folonie suggested to you it was the underwriting statement you are talking about?

A. I have forgotten the title of the particular form that Missouri furnishes us with.

Q. And you didn't ask Mr. Folonie to furnish you that information just now?

Mr. Folonie: I object to that.

The Referee: Sustained.

(To which action and ruling of the referee, defendants by counsel then and there at the time duly excepted and still except.)

[fol. 1422] Mr. Barker:

Q. Now, Mr. Walsh, as I understand it then, on the blank furnished as you say by Missouri there is an apportionment to the state of its part of your underwriting expense?

A. That is true.

Mr. Barker: That is all. Thank you, sir.

Redirect examination by Mr. Folonie:

Q. Mr. Walsh, on the books of your company do you apportion any part of your expenses on your general books of account as between states so as to show an apportioned — to the state or showing the apportioned amount.

Q. In the annual statement blank filed with the State of Missouri is there any other item of expense apportioned to the state showing the apportioned amount to Missouri?

A. No.

Q. On the back of the so-called "Underwriting statement by classes" blank filed with the State of Missouri, is there on the back of that a statement of expenses?

A. Yes.

Q. And is there at the bottom of the back of that sheet an apportionment of a part of the overhead of all your expenses, apportioned to Missouri?

A. There is.

Q. And is there any other place except on the back of that one blank where there is anything in your books or anything filed with the State of Missouri, any apportionment of expenses of any kind to Missouri?

A. No.

Q. And in the annual statement blank filed with Missouri does there in any place—is there any use made of that apportioned expense which shows on the back of that underwriting statement?

A. No.

[fol. 1423] Q. Is there any calculation of an apportioned expense so as to arrive at a net profit or loss in the State of Missouri in any blank you file with that state?

A. I don't get that question.

Mr. Folonie: Read the question.

(Question read by the reporter.)

A. No, other than the underwriting statement.

Q. And does it purport to show the profit or loss of your business in the State of Missouri?

A. I am not sure whether it extends as far as the final profit or loss, but it goes in that direction.

Q. Is it inclusive of all your business, or only the so-called regulated classes—so far as the premiums therein concerned are——

A. (Interrupting.) I think it is only the regulated classes.

Q. So do you file with the State of Missouri or have on your books or records or in any statement filed with the State of Missouri at any place any statement or any figures which set forth the entire premiums derived by your company—the entire losses upon any basis, the entire expenses and then a determination of the profit or loss within that State upon the use of those figures?

A. No.

Mr. Folonie: That is all.

The Referee: Mr. Walsh, I assume that the term "general expense" may be understood to mean the expenses of

the home office as related to the entire business of the company, and we may differentiate expenses arising in or peculiar to a given state as local expenses. Now, with that [fol. 1424] assumption, out of what fund are the general expenses of your company paid?

A. Out of the entire funds of the company.

The Referee: And those funds are derived from the entire activities of the company?

A. True.

The Referee: That is all.

Recross-examination by Mr. Barker:

Q. Now, Mr. Walsh, in arriving at the question as to whether or not your company shows a profit or a loss on its Missouri business, do you consider solely the direct business in Missouri to determine that, or how do you determine it, please?

A. We consider all of the business in Missouri.

Q. For instance, suppose that you take a five year policy; and suppose that on that five year period your company would take in or receive from Missouri $1,000,000. Suppose that your losses were $600,000 and suppose that your expenses were $400,000; Missouri expenses; making $1,000,000. Would you figure that you had broken even in that state?

A. Yes; based on just that data and no more.

Q. And in figuring whether you broke even or not you would not consider what is called home office expenses at all?

A. I assumed that when you spoke of the $400,000 expenses you had included therein home office expenses.

Q. Well, we will start over again. Confining yourself to Missouri exclusively and alone, during that five year period you take in $1,000,000; during the five year period losses [fol. 1425] within the boundaries of the state are $600,000 which you pay. The expenses inside of the borders of the state are $400,000. Would you then as a secretary of your company figure that you had broken even in Missouri?

A. No.

Q. Why not?

A. Because there have been other expenses.

Q. What other expenses?
A. Well, postage, we will say, at the home office.
Q. What else?
A. Rent.
Q. Where?
A. At the home office.
Q. Outside of Missouri?
A. Yes.
Q. What else?
A. Salaries.
Q. Where?
A. At the home office.
Q. Outside of Missouri?
A. True.
Q. What else?
A. Oh, stationery.
Q. Outside of the state?
A. True.
Q. Then why would you consider those expenses outside of the state in arriving at the question as to whether you had a profit or loss in Missouri?
A. Why?
Q. Yes, sir.
A. Because some of them—because they were overhead charges and a portion of them applicable to Missouri.
Q. And do you so conduct your business?
A. We conduct our business in that way, yes.
Q. You mean that you charge Missouri with a certain part of the salary of the president?

Mr. Folonie: We object to it as misleading, and the witness has so clearly explained the situation that we object to the reiteration.
[fol. 1426] The Referee: This is cross examination. Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

A. We do not charge any portion of the president's salary to Missouri specifically.

Mr. Barker:

Q. Take the stamps that you mentioned; charge any of them to Missouri?

A. Not specifically, no.

Q. Then you do not charge any of these things at all to Missouri, do you?

A. Not by a direct charge on the company's books.

Q. Then your expenses in the home office would have nothing to do with whether you earned a profit or had a loss in Missouri, would they?

A. Oh, yes, they would.

Q. Well, why?

A. Because they have got to be apportioned somewhere.

Q. Well, do you apportion them?

A. Not on the general books of the company. We do on our reports that we render to the State of Missouri.

Q. Well, let us eliminate the reports and talk about the conduct of your business as a business. I am not interested in what book it is. Do you apportion them in some method, and if so, how?

Mr. Folonie: We object. The word charged—I have been objecting and I hope I haven't been offensive to the court and counsel by my reiterations, but counsel evidently confuses the fact that there is no charge on their books as I [fol. 1427] understand it from the witness' testimony—there is no charge of the overhead in the blank, except that they are listed on the back of the underwriting statement. Now, there is—if a calculation were undertaken from these figures where no specific charge is made, if a calculation were undertaken from these books and records of whether the business in Missouri was profitable or unprofitable, quite clearly the overhead would be taken into account, but counsel's form of his question is whether it is a charge, and I have been compelled to object, because it must necessarily have a misleading effect. Now, that it is taken into account in the calculation I readily concede and is and was and will be and must be; but it does not specifically appear in the books and records. Now, how this line of inquiry can ever come to a conclusion if counsel persists in his use of a term which it seems to me is necessarily misleading I don't know. I don't wish to make myself objectionable by constant ob-

jections, but they don't go to form at all. They go to a substantive misunderstanding of the counsel and witness by the constant reiteration of that term, "charge," where the witness has made it clear that there is no charge but that if a calculation were made he would take it into account.

The Referee: I think the counsel's use of the word "charge" has generally been understood to mean the same thing which the witness means by "apportion."

Mr. Barker: I would like to have my last question read. I don't think Mr. Folonie was quite sincere. I didn't use [fol. 1428] the word "charge" at all. It gave him an opportunity to explain to the witness what he wanted, I think.

Read the question. See if the word "charge" was ever offensively used in it.

(Question read by the reporter.)

Mr Barker: Now, I thought Mr. Folonie had an opportunity to explain to the witness that there was quite a difference between the words, when I hadn't even used the word at all.

The Referee: Objection overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness:

A. We do not apportion them on the general books of the company.

The Referee: Now, the question didn't relate to the general books of the company, but to the fact of whether or not any portion of those expenses is apportioned to the State of Missouri, in any way whatever.

A. Yes. In any calculation which I might be asked for of the results in Missouri I would furnish the earned premiums, of course, and the losses incurred and the expenses incurred, and in order to get those expenses incurred I would take the Missouri expenses within the State of Missouri, and of course I would apportion in some way or other the overhead of the company to Missouri.

The Referee: Now, then, does this state the fact: That in the actual operation of the business of your company,

without respect to what any books or any reports may show, [fol. 1429] the general expenses of the company are apportioned among the several states in which the company does business?

A. Yes.

Mr. Barker: Thank you.

The Referee: In what proportion are they apportioned?

A. Roughly in the proportion of premiums in the state to premiums throughout the states.

The Referee: Then in determining the amount of that expense which should be apportioned to a given state, what method of calculation do you pursue?

A. I would use that method of calculation, that is, the premium method, allowing for certain considerations which ought to be taken into consideration, such as we might, for instance, have got a large amount of business from some source within the year. Might have got a good deal of marine business which Missouri probably would not furnish any of, and so forth; but generally, under the form rendered to Missouri, why, Missouri gets an advantage, because they don't consider those large items.

The Referee: That apportionment is made on the basis of what?

A. Premiums.

The Referee: Suppose, for example, in a given state the premiums derived from the business in a given year in that state amounted to 1/100 part of the total premiums of the country for that year. What portion of the general expenses would be apportioned to that particular state?

A. 1/100 part.

The Referee: It seems to me that meets the situation.

Mr. Barker: Thank you.

[fol. 1430] Mr. Hogsett: If the court please, the defendant asked under the stipulation heretofore filed in this cause, for the production of Mr. Jameson, the president of the Globe Rutgers Insurance Company, for examination. We have produced him under that stipulation.

(Whereupon the defendant, to maintain the issues on his behalf, introduced evidence, oral and documentary, as follows, to-wit:)

[fol. 1431] E. C. Jameson, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Jacobs:

Q. Give your name, please.

A. E. C. Jameson.

Q. And where do you live?

A. New York.

Q. You are president of the Globe Rutgers Fire Insurance Company?

A. Yes.

Q. How long have you been president of it?

A. Since it was consolidated in 1899—I mean the consolidation of the Globe and Rutgers.

Q. Well, were you with either of those companies prior to the consolidation in 1899?

A. Yes, I was president of the Globe.

Q. How long were you president of the Globe?

A. Well, I was president of that company about five years—about that.

Q. You have been president of the consolidated companies about 24 years?

A. Yes.

Q. And were you connected with the Globe prior to the five year period that you were president of it?

A. No.

Q. Had you ever been connected with the Rutgers Company prior to your connection with the Globe Company?

A. I was a director and president of the Rutgers.

Q. Before you were connected with the Globe?

A. Yes. Now, wait a minute. I am not dead sure whether I was president. I think I was president of it just about a year before they were merged.

[fol. 1432] Q. Let's see, they were merged in 1899?

A. Yes.

Q. And in the preceding five year period weren't you president of the Globe Company?

A. Yes.

Q. Were you also president of the Rutgers Company for a year preceding 1899?

A. I think I was, but I would have to look it up to be sure. I think I was.

Q. Were you a member of the board of directors during that year?

A. I think I was a director and president of that company before they were merged.

Q. How long were you a director in the Rutgers Company prior to the merger?

A. I have forgotten; a short time.

Q. How long were you president and director of the Globe Company prior to the merger?

A. About five years.

Q. That five year period back of 1899 marked the beginning of your connection with either the Globe or the Rutgers, eh?

A. Yes.

Q. And then upon their merger in 1899 you became president and member of the board of directors of the consolidated companies?

A. Yes.

Q. And have continued so to the present time?

A. Yes.

Q. Your company is engaged in what lines of insurance business?

A. In fire, marine, automobile, earthquake, tornado, inland marine.

[fol. 1433] Q. Now, what is inland marine, Mr. Jameson?

A. Well, inland marine is marine, if you exclude the ocean marine business.

Q. Well, now, ocean marine business means insurance, does it, upon ocean transportation?

A. On the high seas, yes.

Q. And as distinguished from that you have inland marine?

A. Yes.

Q. What do you mean by that? Of course, you say it is distinguished from ocean marine, but what does it include?

A. It includes lost goods during transportation within the country.

Q. Does that mean river transportation and railroad transportation?

A. Yes; exactly.

Q. Do you insure against fire in the transportation of goods?

A. Yes.

Q. Do you insure along any other lines except for fire, on inland marine?

A. Yes.

Q. What other hazards do you cover?

A. Oh, I beg your pardon, what was the question?

Q. What other hazards do you cover besides fire on inland marine insurance?

A. On inland marine insurance what other risks do we insure besides fire?

Q. Yes.

A. Well, we insure breakage, collision; and water hazards on the lakes.

Q. Rivers?

A. And rivers; inland waterways. Theft and pilferage is included in that, but our company excludes that. I wouldn't say we never had a contract that embraced it but generally speaking we don't write it.

[fol. 1434] Q. Now, you cover these other risks you suggested, with the possible exception—approximately—broadly speaking, of those two exceptions you just mentioned?

A. Yes.

Q. I think you also suggested that you wrote automobile insurance?

A. Yes.

Q. Does that include fire?

A. Yes.

Q. And collision?

A. Yes.

Q. Does it include theft as well?

A. Yes.

Q. Liability?

A. What do you mean by liability?

Q. For personal injuries or property damage.

A. Collisions, liability from collision, yes.

Q. Well, are your activities limited to collisions in your automobile insurance? I mean does it cover personal injuries?

A. No.

Q. You do an earthquake business, you say?

A. Yes.

Q. In addition to that inland marine, your automobile and fire and tornado and lightning?

A. Well, yes.

Q. Windstorm?

A. Yes.

Q. Does that about cover the business that your company does, Mr. Jameson?

A. As far as I can remember, that covers about all of them. The statutes of New York define the line of business that can be written by fire insurance companies. We engage in all of them.

Q. With one or two possible exceptions that you suggested a while ago?

A. Well, that is simply an exception within a class.

[fol. 1435] Q. Now, you do an underwriting business, of course, as an insurance company?

A. Yes.

Q. And do you in addition thereto do a banking and investment business?

A. No, we don't do any banking business. We invest our assets and get the best results out of them—to get the best results out of them.

Q. You say you don't do a banking business, that you don't engage in the ordinary banking business as understood by the term generally?

A. Yes.

Q. Are you familiar with the general business of your company with respect to its profits or its losses?

A. Yes.

Q. Its underwriting experience, generally speaking?

A. Yes.

Q. And its banking or investment business, generally speaking?

A. Yes. We don't do any banking business.

Q. Very well.

A. We do investments.

Q. Very well. Now, as a member of the board of directors and the president of your company, you have direct cognizance and at least a partial control over your investments?

A. Yes.

Q. Do you also have a direct connection with the underwriting end of your business?

A. Yes.

Q. Do you separate your business into its parts?

A. What do you mean by that, classify them?

Q. Yes. Into underwriting and investment business, or do you conduct it as a whole?

A. Why, it is conducted as a whole.

[fol. 1436] Q. Are you familiar with the forms which are annually filled out and filed by your company with the Superintendent of Insurance of the State of Missouri?

A. Not very familiar.

Q. Have you examined them?

A. No. I sign them.

Q. Do you know their names—of those forms?

A. The names of the forms?

Q. Yes.

A. No.

Q. Do you know how many your company files annually with the State of Missouri?

A. No, I don't. I think it is once a year, isn't it?

Q. How many forms or how many reports your company files annually with the State of Missouri?

A. No, I don't know.

Q. You say that you execute them as president of your company?

A. Yes.

Q. You also make affidavit to them, don't you?

A. I execute the annual statements.

Q. Do you execute any others besides the annual statement?

A. I don't remember any. At the same time, we may file statements of certain premiums that may be called for by the department. I am not able to say without looking it up.

Q. Do you not only sign but make affidavit to the report or reports which are made to the State of Missouri, as president of your company?

A. Yes, sir.

Q. You say that you haven't got a detailed or intimate knowledge of those reports, what they contain, the number of them or their names, Mr. Jameson?

A. Not intimate, no; only a general knowledge.

[fol. 1437] Q. What do you understand those reports to be? I mean with reference to what they contain?

A. Why, it is a statement of the condition of the Globe-Rutgers—its financial condition.

Q. In what way?

A. Well, shows its assets and liabilities.

Q. Broadly speaking?

A. No, exactly speaking.

Q. You misunderstand me. I don't mean you passed an estimate, but I mean covering all your business in its various business ramifications.

A. Well, yes. Yes, it does that and in addition gives figures of the business transacted in Missouri.

Q. Where is the head office of your company?

A. New York.

Q. Have you branch offices in the United States?

A. Well, we have agencies.

Q. Well, have you any branch office—has your company divided the country into zones from which you transact business?

A. No.

Q. Is all of your business transacted out of the head office, through agencies scattered over the country?

A. Yes.

Q. All of the premiums are written out of the head office? I mean by that, you understand—I don't mean you write all the premiums here, but do all the reports of your agents throughout the United States come directly to the home office in New York City?

A. They do, yes; with the exception that the California office does not send what is called a daily report of each risk. They send Bordeaux.

[fol. 1438] Q. What are they?

A. It is a list of risks without many details.

Q. Now, have you an office in Chicago?

A. No, we haven't an office there. We have a general agent in Chicago.

Q. Does this general agent have agents scattered out through a certain zone in the United States?

A. Illinois, yes.

Q. Just the State of Illinois?

A. Yes.

Q. Now, that is premium written by those agents in the State of Illinois—did they report or do they report their business to the office in Chicago, or do they report their business to the office in New York?

A. I think they report that to Chicago only.

Q. Now, have you a similar agency in San Francisco or Los Angeles or California anywhere?

A. Yes.

Q. Now, do the agents scattered out over that territory, then, whatever it may comprise, make the reports to that office in California, or do they make them to New York?

A. They make them to San Francisco.

Q. Have you other places similar to the office in San Francisco and Chicago, in the United States?

A. Yes.

Q. Have you one in the south?

A. Yes, we have.

Q. Where is it located?

A. Well, we have one in Birmingham, Alabama.

[fol. 1439] Q. What does it cover?

A. Covers Alabama.

Q. Have you any offices which cover more than one state?

A. Yes.

Q. Where are they located?

A. Well, one in San Francisco.

Q. What does it cover?

A. That covers what is called the Pacific coast.

Q. And where else besides San Francisco?

A. Well, we have one in Georgia which covers Georgia and Florida.

Q. Have you one in St. Louis?

A. No.

Q. Kansas City?

A. No. The agents in Missouri report direct, not through a general agent.

Q. Your agents there report to the New York office?

A. Yes.

Q. Have you any other places besides those you have named?

A. Of more than one state, you mean?

Q. Yes; where they report to a place like Chicago or San Francisco or to the Georgia office?

A. Yes. We have New Orleans.

Q. It covers several states?

A. Mississippi and Louisiana.

Q. Do the writings in those two states, are they reported to New Orleans?

A. They are reported to New Orleans, and I don't know whether they are also reported here or not. I think not. Some of these questions I would be—in order to be absolutely accurate in the smallest details, I would have to look it up in the office.

Q. You keep in touch with your underwriting business throughout the United States, don't you?

A. Yes.

[fol. 1440] Q. Do you receive reports from your various offices and agents in the United States?

A. Well, I see statistics off and on, at different times.

Q. Well, are your annual reports to the State of Missouri prepared in your office?

A. Here in the New York office, yes.

Q. Do you receive any return from these various offices you have suggested and others that you may have, reports covering their business—in New York—reports to New York?

A. There is different arrangements for different states or different sections. For instance, California makes up their own reports, or the Pacific coast department, I should say, makes up their own reports to various states.

Q. How about the State of Missouri?

A. Oh, I guess all the rest of the reports are made up in New York office.

Q. Sure of that?

A. I am not sure, but I think so.

Q. Does that include Missouri?

A. Missouri is made up in the New York office. There is no general agency operating in Missouri.

Q. Do those reports which are made in the New York Office cover the writings and the expenses and the losses for the United States?

A. Yes.
Q. All of it?
A. Yes.
Q. Including California?
A. Yes.
Q. What conflagrations have transpired during the existence of your company?
A. Well, the Rochester, the Baltimore, the San Francisco—well, there is a long list of them. Jackson Valley couple [fol. 1441] of times, and so on.
Q. Well, the conflagrations that you have suggested—what do you mean by conflagration, Mr. Jameson?
A. Well, a conflagration amount has been defined by the insurance commissioners as being a loss of 1 million dollars or more.
Q. Is that the sense in which you used it?
A. That is the sense in which we have used it, since they promulgated that definition; but before that I used to define it as a fire involving two or more risks.
Q. You say this is a definition furnished by the insurance commissioners. What insurance commissioners?
A. Well, at their convention.
Q. Do you know what states were represented?
A. No, I don't.
Q. Who represented your company in the conferences and deliberations which touched upon that particular matter?
A. Our company was not represented at all.
Q. You had nobody down there?
A. No.
Q. Your company was not represented there at all?
A. No. No company was that I know of.
Q. You are sure of that?
A. Yes.
Q. Very well. The commissioners took this up in their own convention after—the commissioners took this up in their own convention without consultation with any of the representatives of the companies and defined a conflagration?
A. As far as I know.
[fol. 1442] Q. Now, these forms about which you spoke, do you know how they come to be written up in their present form or in the forms of the last few years?

A. You mean the form itself?

Q. Yes.

A. Who created the form itself?

Q. Yes.

A. Well, it was done—I guess each state insurance department got up their form and the insurance commissioners at their periodical meetings sort of developed it, I think, as I remember.

Q. Did they standardize it?

A. Yes.

Q. Who represented, if anybody, your company at these conferences concerning the forms?

A. Well, nobody represented our company direct. The national board may have been represented.

Q. Who appeared, generally speaking, as the representative of the companies?

A. I don't know.

Q. It was somebody, wasn't it?

A. I don't know.

Q. Don't know one way or the other?

A. No. All I know is that our company was not directly represented by anybody. The National Board may have been represented. I don't know.

Q. Your company is a member of the national board of underwriters, isn't it?

A. Yes.

Q. What percentage of the companies doing fire business in the United States are members of the national board of underwriters?

A. I should say pretty nearly all of them, if not all of them.

Q. Practically all of them, at least.

A. Yes.

Mr. Hogsett: Stock companies.

[fol. 1443] A. Yes, I mean stock companies.

Mr. Jacobs:

Q. Do you or do you not know whether or not the form for reports about which you were speaking as the result of collaboration between some commissioners and representatives of the companies or for the national underwriters board?

A. I have no knowledge about that at all.

Q. Did you ever hear of it?

A. No.

Q. Ever discussed it with anybody connected with those companies?

A. No.

Q. No. Know nothing about it one way or the other?

A. No; how it was gotten up, you mean?

Q. Whether it was the result of collaboration.

A. I don't know anything about it at all.

Q. Know anything about it one way or the other?

A. No.

Q. Now, are you familiar with the manner in which fire rates are arrived at—at least, I mean, in the state of Missouri, covering fire rates—fixing of fire rates?

A. I have a very superficial knowledge of that.

Q. Do you know what the Missouri Inspection Bureau is?

A. Well, I have simply heard.

Q. What is it?

A. That it was a rating—a state rating bureau.

Q. Is your company a member of it?

A. I suppose so.

Q. A contributing member?

A. I suppose they are; must be.

Q. You know as a fact they are, don't you, Mr. Jameson?

A. Well, I think I can say yes to that.

[fol. 1444] Q. Who sustains or supports the Missouri Inspection Bureau?

A. I don't know.

Q. Don't you know that the companies do?

Mr. Leahy: That is a matter of statute.

The Witness:

A. I don't know whether they do or not, or whether the state does.

The Referee: The inquiry is directed to this witness' personal knowledge, I presume.

Mr. Jacobs: Certainly.

Q. As president and director of your company, don't you know whether you have an item of expense attaching to the maintenance of the Missouri Inspection Bureau?

A. No.

Q. You don't know that?

A. No.

Q. Do you know what its duties are?

A. I know what its duties are from inference. I never looked up the statute on it or read the statute creating it or anything of that kind.

Q. Do you know how many states in the union form a concerted action in the fixing of fire rates in the statutes?

A. I don't know the number, no.

Q. Haven't you any idea, how many states permit by statute a concerted action among companies to fix rates?

A. Well, that question sort of gets me. You mean has it a rate—a state rating organization, by law?

Q. Has it a rate?

A. Has it a rate that is binding, you mean? That is what you call a state rate?

Q. Yes.

A. State rates?

[fol. 1445] Q. Yes.

A. Well, I should say offhand that there are about 8 states that absolutely fix the rates, and a good many other states have a sort of an oversight over the rates that are made, but don't actually make the rates themselves

Q. Where would you classify Missouri?

A. Why, as a state rate.

Q. It fixes the rate itself?

A. Yes.

Q. You mean by that that in the State of Missouri the state fixes the rate?

A. Yes.

Q. What does the Missouri Inspection Bureau do?

A. Well, that is the organization that makes inspections and makes the rates, isn't it?

Q. Well, isn't the Missouri Inspection Bureau a creation of the companies?

A. Just what I said; I haven't read the statute, but we will—I presume it was done under the direction of the state, isn't it? State created?

Q. I am getting at your knowledge of the situation. Do you understand that the Missouri Inspection Bureau is an organization of which your company is a member?

A. Yes.

Q. Or a contributor?

A. Yes. Yes.

Q. And what do you understand the Missouri Inspection Bureau to be?

A. To be a state rating organization.

Q. That is, an organization named by the State of Missouri?

A. Well, created by the state to do the rate. I don't know how the personal is made up. I don't know how that is appointed.

[fol. 1446] Q. You have no idea of that?

A. Well, I haven't read the statute, no.

Q. Well, haven't you made inquiry or aren't you interested in that matter as one of the states in which your company does business?

A. Well, I am interested but there is other officers of the company attending to that part of the business.

Q. Missouri does its business directly with your office here in New York, doesn't it?

A. Yes.

Q. Don't you understand that the Missouri Inspection Bureau is made up of representatives of the company who promulgate rates for fire insurance in that state?

A. Well, yes, I understand so, but I never read the statute.

Q. Under the supervision of the Superintendent of Insurance in the state?

A. I presume so.

Q. Is that your understanding of it?

A. Yes, that is my understanding.

Q. What I am getting at is, if you understand the method of fixing rates in the State of Missouri along the lines you have just discussed. How many states permit a similar action in the Union?

A. I couldn't say offhand; New Jersey has the same thing exactly. I think Washington has the same thing, and I think Michigan has, hasn't it? Louisiana has the same thing, Texas has the same thing, I expect there are two or three others, probably, that I don't happen to think of.

Q. Then if there are two or three others there are seven or eight states in addition to the State of Missouri that have a similar situation?

A. Yes.

[fol. 1447] Q. Whereby they permit the fixing of rates by a bureau representing the companies which rates in turn are under the supervision of the State Superintendent of Insurance?

A. Yes.

Q. Was your company one of the companies which requested an increase in rates in the State of Missouri in January, 1920?

A. We did, yes.

Q. Or just prior thereto?

A. Yes.

Q. Do you recall that in January of 1920, there was an increase——

A. (Interrupting.) Oh, I beg your pardon. What date did you give?

Q. January, 1920.

A. Of this year?

Q. '20.

A. Oh, January, '20. I don't know whether we were or not.

Q. Do you recall whether or not there was an increase in fire rates in the month, in that month of that year, of 15 per cent, in the State of Missouri?

A. I don't remember.

Q. You don't remember about any of the circumstances concerning that request for an increase in rates at that time?

A. No.

Q. Do you say your company is now asking for an increase in rates in the State of Missouri, this year?

A. Yes.

Q. That is your understanding, Mr. Jameson?

A. Yes.

Q. What increase, if I may ask, is your company and others asking in the State of Missouri?

A. They haven't fixed any figure. They just called at[fol. 1448] tention to the fact that the loss ratio was so high that it was creating a loss; been doing that for two or three years, and asked the rates be increased.

Q. And they asked for an increase of rates?

A. Yes.

Q. In making up your annual reports, you don't know the names of the reports and the number of them, do you, that you make annually to the State of Missouri?

A. No.

Q. Although you say you execute them and make affidavit to them?

A. Well, I remember of course signing the annual statement, but whether there is any other statement I don't remember.

Q. Do you know what your underwriting statement covers?

A. Yes.

Q. What does it cover?

A. Covers the condition of the company as embraced in its assets and liabilities, and it covers the Missouri business by itself—the underwriting exhibit.

Q. Completely?

A. Yes.

Q. The annual statement report?

A. Yes.

Q. You mean by that that the annual statement report which you give to Missouri each year covers the underwriting experience completely?

A. Yes.

Q. That means premiums?

A. Yes.

Q. And expenses?

A. Yes.

Q. And losses?

A. Yes.

Q. And are you sure of that?

A. Yes.

[fol. 1449] Q. Do you know of any other report which you make to the State of Missouri covering these things?

A. No, I don't know of any other.

Q. Have you ever heard of the annual underwriting by classes—experience by classes report?

A. I only have a very slight recollection of the thing being discussed but whether it is in actual force or use anywhere I don't know at the present time.

Q. How about tax report, do you know of any such report being made to the State of Missouri?

A. Taxes are based on the annual statement.

Q. Are you sure of that?

A. Well, it goes with it. It is a part of it.

Q. Are you accurate in that your full underwriting experience is in your annual statement report and not in your underwriting experience by classes report?

Mr. Hogsett: If the court please, isn't all of this subject to the objection that it is secondary evidence? These reports would be the best evidence, and we are spending a great deal of time inquiring about what is in the reports, and the reports are the best evidence, and we object to this, not because we have any objection to the facts coming out, but it is just a useless waste of time.

Mr. Jacobs: I want to know what he does know about Missouri business.

Mr. Hogsett: You are entitled to that, if it is competent, but you are not entitled to ask him what is in a written paper.

[fol. 1450] The Referee: The inquiry seems to be directed towards ascertaining what this gentleman knows concerning this feature of his company's business. I have assumed the inquiry does not relate to the matter of proving the contents of the report.

Mr. Hogsett: That is the effect of it.

The Referee: In a sense, it may be, but the inquiry is directed to the extent of this witness' knowledge. At any rate, these are preliminary questions, and the objection is overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Read the question.

(Question read by the reporter.)

A. Well, the annual report, as I understand it, is composed of two or three exhibits and probably two or three different papers. The whole thing, which I spoke of as annual report, constituting the annual report. The tax statement is a blank that is by itself, so to speak.

Q. Now, Mr. Jameson, do you understand in these reports which you annually execute for the state of Missouri that you—we will say all of them—that you give us your full experience, to the State of Missouri, of your company?

A. Yes, that gives our full experience.

Q. And you mean by that your experience with reference to underwriting in the state?

A. Yes.

Q. Your experience generally with reference to your investment operations?

A. Well, the investment operations don't pertain particularly to the State of Missouri.

[fol. 1451] Q. Why don't they?

A. Well, because the investment operation is a general operation. There is no Missouri in that.

Q. Do you make any reports with reference to that to Missouri?

A. Our general statement embraces that, certainly.

Q. Well, you do make something on that, then?

A. Yes; report the general operations.

Q. Do you make an allocation of expense to Missouri?

A. No.

Q. You do not?

A. No.

Q. You are quite accurate in that matter, that your company makes no allocation of general expenses to Missouri?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. Should it be done?

A. No.

Q. You don't think it should be?

A. The expenses incurred in Missouri is all that is treated in the Missouri report.

Q. And that is all that should be treated?

A. Yes. General report of the company's report shows the general expense of the home office.

Q. You mean the report to Missouri?

A. Yes.

Q. Well, then, it seems to me you have said something now that contradicts what you said a moment ago. Do you make a report and allocation of expense of any kind—

general expense to the State of Missouri in your annual underwriting reports?

A. No.

Q. Of no kind?

A. No.

[fol. 1452] Q. No allocation, then. Now, should there be an allocation of general expenses to the State of Missouri?

A. No, you couldn't do it.

Mr. Folonie: We object to that. It is misleading.

The Witness: It wouldn't amount to anything if you did.

Mr. Folonie: It is a shot-gun question and answer and you could twist it around and make it mean anything afterwards. I think it ought to be more specific.

The Referee: If the witness at any time does not understand the import of the question, he is of course entitled to ask for more definite questions. In this particular instance I take it that this particular witness is aware of what is embraced within the question. He may answer. Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Do you recall the question, or do you want it read?

A. I think the only way to clear this up is to explain how it is made up. Do you want me to do that?

Q. Just a minute. I don't know but what that would be a good idea. Just explain how it is made up. Now, what are you talking about?

A. The statement to Missouri. It is made up showing two things, the operations in Missouri and the general total operations of the company. The operations in Missouri as set forth of course shows expenses of the business. On that business, but has no allocation of general office expenses whatever.

[fol. 1453] Q. Go ahead.

A. The general office statement shows——

Q. (Interrupting.) Wait a minute. General office statement, is that another statement you are talking about?

A. Well, I explained when I started that it is made up——

Q. (Interrupting.) Sir?

A. That it is made up of two sections; one is the general operations of the company and the other is the Missouri operations of the company; and in the Missouri operations of the company the expenses on that are set forth.

Q. What expenses?

A. Commissions—let's see. Besides commission, the losses, adjustments, taxes and so on; incurred on that business as it comes from the State of Missouri.

Q. All right.

A. Now, when the business reaches the head office that is another matter, and none of that expense is allocated to the Missouri statement.

Q. And should it be?

A. Well, I don't think it should be, because the company takes cognizance of its business in this way: That its loss ratio in Missouri is so large, expense ratio is so large, if it doesn't leave enough margin to cover 2 or 3 per cent more for expenses at the home office, why, then they consider that they are on a non profitable basis.

Q. When you say expenses of home office, you mean the general expenses of your company?

A. Yes.

Q. As distinguished from the expenses which are incurred in each specific state?

A. Yes.

Q. In the carrying on of the business of that particular state?

A. Yes.

[fol. 1454] Q. Now, the expenses of your home office, as so distinguished, means all salaries paid in the home office?

A. Yes.

Q. Means all losses that you may have to pay?

A. Yes.

Q. All clerical and stenographic help?

A. Yes.

Q. And furnishings, stamps and stationery?

A. Yes.

Q. And all the expenses of the central or home office?

A. Yes.

Q. It also means expenses of your investment operations, whatever they may be?

A. Yes, certainly.

Q. In the matter of making the investments, of maintaining them?

A. Yes.

Q. And looking after them?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

Q. And the general work and duties that are attendant upon looking after a large amount of investments; that is correct, isn't it?

A. Yes.

Q. Now, all those expenses that I have just stated to you, are any of them in these reports allocated to the State of Missouri?

A. No.

Q. And should they be?

A. Why, that is a matter of opinion. I can't see any usefulness in it, myself.

Q. You believe that the home office should pay those expenses, and that as far as the statement is concerned they should remain silent on that?

A. I don't see any advantage in allocating anything. The result of the business in the state comes to the head office of the company—all the states. Now, unless that [fol. 1455] shows a sufficient margin to give some profit and also to pay—to cover the general percentage of expense at the home office, why, of course the company can see that they are not making any money. Now, I don't know how you can fix it up any better than that. That is as clear as it can be.

Q. Well, I don't know as we understand one another. What do you understand furnishes the basis of a rate for fire insurance in the State of Missouri?

A. Why, the loss and expense.

Q. What losses, now?

A. All the losses incurred on the policies.

Q. You mean in the State of Missouri?

A. In the State of Missouri, yes.

Q. How about your premiums?

A. What do you mean by that?

Q. Does that figure in your calculation, or say in the calculation of the Missouri Inspection Bureau in the fixing of a rate in the State of Missouri?

A. Why, of course. You take your income and your outgo. You take your premiums as your income and you take your outgo as your losses and expenses.

Q. And upon that rates are fixed?

A. I should think so.

Q. There isn't—in your opinion and according to your thought, there is no expense of the home office, no allocation of expense of the home office of any kind or character which should be reported and considered in arriving at a rate in the State of Missouri?

A. No, except indirectly, as I said before.

[fol. 1456] Q. How do you mean indirectly?

A. Well, I mean the general expense ratio of the company is set forth, and you can see at a glance how much margin there has got to be over the local or state expense to also cover that additional general expense.

Q. Well, then, is that your way of saying that the rate in the State of Missouri should be fixed—based upon these considerations that we named a moment ago? And in addition the needs of the home office?

A. Yes.

Q. Well, then, you do mean that the expense, proportionately speaking, of the home office for its various operations should receive consideration in the fixing of rates in the state of Missouri?

A. Yes.

Q. That is what you mean, then?

A. Yes.

Q. Very well. Do you make an allocation of its expenses to the state of Missouri?

A. No.

Q. Why don't you?

A. Because the blanks don't call for it and it is not, doesn't seem to be useful at all. The same thing—the whole thing is before you at a glance. If your expense ratio in Missouri, for instance, is 35 per cent and your loss ratio in Missouri was, say 65 per cent, why, that is 100 per cent, isn't it? Well, there would be nothing left to cover 2 or 3 per cent expenses necessary in the home office, or the tax. So you would see that the premiums should be advanced.

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Q. How could they advance the premium in the state of Missouri if the report which you file in the state of Mis- [fol. 1457] souri contained no reference to allocated expense?

A. There is no allocation, but the expense ratio is right there in the report.

Q. What do you mean—you mean expense ratio of the home office or of the state?

A. Of the whole country.

Q. What do you mean by expense ratio?

A. The expense ratio of the Globe Rutgers for instance was about 34 per cent or something—31 per cent. Well, if your expenses, expense ratio, in Missouri is 28 or 29 per cent, why, there is the difference right before you.

The Referee: Mr. Jacobs, just a moment.

Q. On what basis is your expense ratio calculated?

A. The general expense ratio?

Q. Yes.

A. Well, it is the commissions paid to agents—it is composed of the commissions paid to agents, salaries, rents, stationery, telegrams, taxes, adjustment expenses and legal expenses and everything.

Q. Those items make up the general expense?

A. Yes.

Q. What my question is directed to is the basis on which you compute in order to get the ratio to which you referred a moment ago. Ratio calls for comparison or proportion, does it not? A calculation on a given basis, as 2 is to 6, for example? A percentage of what?

A. Are you thinking now of allocating?

Q. Anything. You spoke a moment ago of a certain ratio. Now, on what basis or sum do you calculate that ratio or percentage?

[fol. 1458] A. Why, it would be between the expense ratio of the state deducted from the general expense ratio of the company.

Q. Or do you mean as compared to the general expense ratio?

A. Yes.

The Referee: Very well.

Mr. Jacobs:

Q. Now, do you mean by that that you make a comparison between the expenses of the state of Missouri or its ratio and the total expenses of the country, of your company?

A. Yes.

Q. And arrive at certain expenses—expense ratios?

A. Yes.

Q. Well, then do you apply that ratio to your actual national expense and allocate that proportion of the state of Missouri?

A. No. We don't do any allocating. We don't go into it as fine as that.

Q. You understand that rates in the state of Missouri are based upon these reports which your company and others files there, don't you?

A. Yes.

Q. Now, you say, as I understand you—maybe I don't understand you, Mr. Jameson—that you include in your reports to the state of Missouri the expenses of that state, the losses of that state, and the premiums of that state?

A. Yes.

Q. And that is the report which you make to the state of Missouri?

A. Yes.

Q. That there is no allocation of national expenses or head office expenses to the state of Missouri?

A. No.

Q. Now, will you tell me, Mr. Jameson, in making a rate in the state of Missouri how there can be consideration of [fol. 1459] a ratio of expenses as applied to your national expense in fixing a rate in Missouri?

A. Why, you can easily do it. It is all on file everywhere.

Q. Well, is it on file in the state of Missouri?

A. Yes.

Q. Do you make an allocation in Missouri, then?

A. No, don't make an allocation whatever.

Q. How would the Missouri Inspection Bureau, if it were fixing a fire rate in the state of Missouri, arrive at a rate?

A. Why, they would take the loss ratio in Missouri and they would take the expense ratio in Missouri and see how

that comes out, and then they would allow the general overhead which shows on these reports.

Q. You mean by that your home office, in the home office of the company?

A. Yes. And the combined experience of the company. They would have to take that into account.

Q. Well, how would they take it into account and how would they put it into that report? Is is there in the report you filed in Missouri?

A. It is not allocated, but the general report shows the general result of the combined operations of the company.

Q. It is put in this report?

A. That is reported to every state.

Q. Now, Mr. Jameson, you mean that you put in that report all of your expense?

A. Yes.

Q. Of the home office?

A. Well, they are not put in in detail, except as called for by the report.

[fol. 1460] Q. I mean your complete expense.

A. Complete, yes; absolutely.

Q. You have a report in the state of Missouri and it includes that local experience of which you have spoken?

A. Yes.

Q. And it likewise includes all the expense of your home office?

A. Yes.

Q. Now, that is a fact?

A. Not in detail, but in bulk.

Q. In bulk and completely?

A. In detail as much as called for by the statement. They are generally lumped under such heads as taxes and salaries and so forth, and rent.

Q. Well, now, without inquiring about your salary but merely to have a definite point——

A. (Interrupting.) No objection at all.

Q. (Continuing:) Is your salary completely included in salaries of officers that goes to the state of Missouri?

A. Yes, sir, absolutely.

Q. Now, Mr. Jameson, these investments about which you spoke, who handles them for your company?

A. Finance committee.

Q. Who constitutes the finance committee of your company?

A. Well, we generally pick out from the board of directors men that are the best posted and the best talented men for handling investments.

Q. That is, that are in the employ of the company?

A. That belong on the board of directors.

[fol. 1461] Q. Board of directors and officers?

A. Well, the president of our company—for instance, they have different charters and by-laws—but our company, the president is ex officio a member of all committees.

Q. Are any other officers of the company likewise on this finance committee?

A. No, not in our company.

Q. Are any vice-presidents?

A. No.

Q. Or secretary of the company?

A. No.

Q. Or treasurer?

A. No.

Q. Who is on there besides you?

A. We have Mr. John Sterns, who is a large silk manufacturer of New York.

Q. A member of your board of directors?

A. Yes; and C. W. Chambers is the secretary and managing director of the Lloyds Plate Glass Insurance Company—is well versed in investments and a man of great experience.

Q. And is he a member of your board of directors?

A. Yes; and Henry S. Thompson, who is of the Thompson-Starrett Building Company, a building corporation of this city—well, all over; a lot of them out west.

Q. Build buildings generally over the country?

A. Thompson-Starrett Building Company, one of the biggest in the world. He isn't in that now, although it is named after him. However, he is a very good financial man.

And R. K. Prentiss, he is a lawyer—counsel, but he has had a lot of experience in handling investments for states.

[fol. 1462] Q. Is he general attorney for your company?

A. He is one of them, yes.

Q. Is he on the board of directors of other companies?

A. Oh, other insurance companies?

Q. Yes.

A. He is on the board of the Stuyvesant Insurance Company.

Q. Any other enterprises besides insurance companies?

A. Yes, he is on the board of directors of the Lawyers Title & Trust Company.

Q. Any others? Who else beside these gentlemen on your finance committee?

A. No, that is the finance committee; five, and I am ex officio.

Q. What other companies are you connected with besides the Globe-Rutgers?

A. I am president of the Hamilton.

The Referee. Pardon me. I understand that only members of your board of directors are eligible to appointment on your finance committee?

A. Yes, sir.

The Referee: Very good

Mr. Jacobs:

Q. Hamilton, what is that?

A. Hamilton Fire Insurance Company of New York; a small company. One of those old city companies, like the Globe-Rutgers; about a hundred years old.

Q. Any others?

A. I am connected with a number of other insurance companies. I am director in the Pacific, director in the Stuyvesant, and I am president of the National Fire & Marine of New Jersey, and I guess that is all.

[fol. 1463] Q. Do you own stock in that company?

A. The Hamilton?

Q. Yes.

A. Yes, I do.

Q. Do you own stock in the Stuyvesant Company?

A. Yes.

Q. And the Fire & Marine of New Jersey?

A. Yes.

Q. And Globe-Rutgers?

A. Yes.

Q. Now, these investments which you make are made out of what funds?

A. Well, general funds of the company, when they have anything to invest—available for investment.

Q. What kind?

A. There is no particular fund. It is the money they have got in the bank and they are able to spare some of it, why, they invest it and get dividends, or try to.

Q. You are talking about the Globe-Rutgers now?

A. Yes; same with all companies.

Q. Do you divide your premiums into classes?

A. We have our own private classification, certainly.

Q. I don't mean with reference to the writing of policies but do premiums simply mean premiums to you, or money you receive for sale of insurance?

A. Yes.

Q. That is what premiums mean?

A. Yes.

Q. What do losses mean to you?

A. Losses that occur on those policies for which we received premiums.

Q. What do you mean, the losses you paid in 1923, if that is the year you are talking about?

A. The losses, you know, have two—there is two ways [fol. 1464] of stating a loss. One is losses incurred and the other is losses paid.

Q. All right. What do you mean by incurred losses?

A. We mean the losses that have happened during the year.

Q. How do you arrive at that?

A. When they are reported to us we put them in our liabilities.

Q. Do you arrive at them by an inspection of your books and policies?

A. Loss ledgers set forth the losses, yes.

Q. Those losses are reported to you by your various agencies?

A. Yes.

Q. And are they—who fixes the amount of that loss that is reported to you?

A. Well, sometimes the assured reports that he has a total loss or 50 per cent loss. Sometimes if he is reporting it direct. Sometimes through brokers; generally, of course, through agents. The agent makes the estimate in collaboration with the assured and if it is an ordinary loss, why—if it is an important loss we have adjusters go there immediately and then they make the estimate.

Q. Now, in the meantime, when you get an estimate from your agency, regardless of the character of the loss, that goes down upon your books as an incurred the loss?

A. Yes.

The Referee: In the event of a difference between the amount of a loss as estimated by the assured and by the agent, which entry is made upon your loss ledger?

[fol. 1465] A. Why, the estimate of the agent or of an adjuster, if an adjuster has taken hold of it; the estimate of the adjuster.

The Referee: We will adjourn now until 1:30 o'clock.

(Whereupon an adjournment was taken until 1:30 o'clock in the afternoon of the same day; the same being Wednesday, October 17, 1923, at which time parties reconvened at the same place and the following proceedings were had.)

Witness: E. C. Jameson

Direct examination continued by Mr. Jacobs:

Q. Now, those losses stand in the way they are reported, namely the estimate, until there is some reason for their change upon your books?

A. Generally stand that way until they are paid.

Q. Well, put it that way, then. Or until they are wiped off for some reason, whereby they might not be paid at all?

A. Yes.

Q. Or it transpires, doesn't it, Mr. Jameson, at times, that a partial adjustment is made? That is, the entire as originally given is not always paid in full, is it?

A. No.

Q. So those losses which represent incurred losses are not necessarily by any means paid in full at some time?

A. No.

Q. Now, how about expenses, do you figure expenses on the basis of expenses paid?

A. We figure expenses on the basis of expenses incurred—as far as I know.

[fol. 1466] Q. How do you arrive at that figure?

A. I mean to say, not both—both incurred and paid. That is to say, commissions which are fixed and known ex-

penses are charged out right away, on outstanding premiums; and of course every kind of expenses that are not known, why, they can't be.

Q. You say they are charged off at once—if it is commissions?

A. Yes.

Q. Do you mean by that that in keeping your books on a $100 premium whereby $25 commission would be paid as a general average, I presume, that your books would show a receipt of $75 and an expense of $25 paid, the commission?

A. An outstanding premium, you said?

Q. Sir?

A. Did you say outstanding premium?

Q. No, just the day you sold a policy with a $100 premium and the premium is paid and a retention of $25 is made by the agent?

A. Yes.

Q. Now, do you make an entry as I have asked you?

A. Yes, sir, exactly.

Q. Now, Mr. Jameson, how about premiums? How do you figure premiums?

A. Well, I don't know just what you mean by "how do you figure premiums." The paid premiums go into cash, of course, and the outstanding premiums stand as uncollected premiums.

Q. We will make it short. What do you do with reference to the earned and unearned premiums? What do you do about that, does that enter into your calculations?

A. Well, the premiums as soon as written go on the [fol. 1467] books, either as paid or outstanding premiums, and the reserve is set up in the liabilities, in accordance with the legal requirements.

Q. Well, now, when a premium is paid, say on a term policy, you get the premium, of course?

A. Yes.

Q. Either in advance or within a short time from your agent, don't you?

A. Yes.

Q. And do you enter that then upon your books as a premium received?

A. Yes.

Q. And in figuring the experience of your company for the year do you figure those premiums received?

A. Well, it doesn't make any difference whether the premiums are received or not, in figuring the experience of the company. It is losses incurred to premiums written.

Q. Premiums written. That is the way it should be figured?

A. Yes; the only way you can figure it exactly.

Q. The only way you can figure it exactly. Now, Mr. Jameson, your company, the Globe Rutgers Company, survived a number of what are denominated conflagrations?

A. Yes.

Q. In this country?

A. Yes.

Q. Do you remember the San Francisco fire?

A. Very well.

Q. Now, you had an increase in rates—fire insurance rates—of about 15 per cent, following the Frisco fire, over the country generally, didn't you?

A. Yes.

[fol. 1468] Q. How long did that remain in effect?

A. Well, it gradually slumped down until it was all passed away in about two or three years.

Q. Two or three years?

A. Well, I mean the last of it was gone.

Q. You mean the last of the increase?

A. Yes.

Q. But the 15 per cent increase continued in diminishing sums for two or three years after the fire?

A. Yes, sir.

Q. What do you do with your premium reserve, which you say the law requires you to keep?

A. Well, we don't really do anything with it. It isn't anything that is handled like a separate article or anything. It is simply a method of bookkeeping that is prescribed, as far as I can see. It is simply a method of bookkeeping that is prescribed by the state authority whereby you determine the solvency of the company, but you don't do anything particular with.

Q. Well, you mean by that you keep an account of your premium reserve on your books in accordance with the requirements of the laws of the State of New York?

A. Yes.

Q. Beyond that you make no separation between your reserve and surplus, do you?

A. No, not a bit.

Q. It is all carried together?

A. Yes, absolutely.

Q. And the matter of bookkeeping is the result of certain statutory requirements in the State of New York?

A. Yes.

[fol. 1469] **Q. What do you do with it, as a matter of handling it? Do you invest it or keep it in cash in the banks, or what?**

A. Well, as I say, there isn't any such thing really that can be handled. It is simply an item set up in the liabilities in your statement. The funds of the companies are all together.

Q. What do you do with those funds, is what I am getting at?

A. Well, of course, we always keep enough cash on hand so that we can quickly pay any possible obligations that are likely to come up and invest anything that we can spare above that.

Q. The cash on hand—what interest do you receive from the banks for the cash you carry on hand?

A. Well, we receive a cash, I should say, of about 2½ per cent.

Q. Now, the balance over and above the cash on hand you invest?

A. Yes.

Q. In what do you invest that money?

A. Well, the capital has to be invested—the statutory requirements as to investment of the capital—you mean the modus operandi, or what do we buy?

Q. Oh, no. What do you buy?

A. Well, we buy whatever the judgment of the finance committee decides is the best thing to invest in—except that there is a certain requirement as to your capital having to be invested in government bonds or the bonds of any state or county, and so forth. First mortgage bonds worth double—on real estate worth double the amount. That is the usual statutory requirement on the investment of the capital.

[fol. 1470] **Q. Your investments are in New York, aren't they?**

A. Oh, no. Heavens, no. All over.

Q. Well, your moneys are in New York and your investments are controlled by the laws of the State of New York, aren't they, insofar as they are controlled at all?

A. They are controlled by the State of New York practically altogether.

Q. Now, do the laws of New York require that you invest a part of your money in government bonds?

A. Only to the extent, as I say, of the capital; minimum capital requirement.

Q. And is that law the same law that gives you an option—or does it give you an alternative of government bonds or first mortgage bonds?

A. Or the bonds of any state or county, I think—or incorporated city or town. That is about the way it reads.

Q. Now, have you invested your moneys to the extent of the statutory requirement in securities of that kind?

A. Oh, yes.

Q. Have you gone beyond and invested your moneys beyond the requirements of the statute?

A. Oh, yes. Far beyond.

Q. You have invested more money than the statute actually requires in those particular securities?

A. Oh, yes.

Q. Now, have you invested in any stocks?

A. Oh, yes.

Q. What kind of stocks?

A. Well, we have invested in all kinds of stocks. We have invested in railroad stocks and we have invested in industrial stocks.

[fol. 1471] Q. Now, are those stocks, stocks which have a market value upon the Stock Exchange of this city?

A. Well, seldom buy anything that is not readily marketable. Once in a while we do.

Q. By that you mean it has a market?

A. Yes, either on the Exchange or quick market.

Q. Now, do you own any real estate?

A. Yes. Well, we don't own any real estate direct; we own our interest in the Golden Hill Building Company.

Q. That is a holding company?

A. Yes.

Q. What is the extent of the interest of your company in the Golden Hill Building Company?

Mr. Folonie: You mean Globe-Rutgers Company?
Mr. Jacobs: Yes.

A. Our interest in that building company is about 97 or 98 per cent.

Q. Practically you own it?

A. Yes—well, about 95 per cent.

Q. Now, this company built this property which is, which has a building here in New York City, which you occupy?

A. Yes.

Q. And was that building built or the money supplied to the Golden Hill Building Company out of the surplus of the Globe-Rutgers Company?

A. The stock—the money that went into the Golden Hill Company is from stock purchased by the Globe-Rutgers and other companies.

Q. And the money came, did it, from the surplus of your company?

[fol. 1472] A. Well, I couldn't say as it came from the surplus. That is another thing that is intangible; came from the general funds.

Q. Which includes the surplus?

A. Yes.

Q. And your reserve?

A. Yes.

Q. And you say this Golden Hill Company is owned to the extent you said by the Globe-Rutgers Company?

A. Yes.

Q. And any profits that are earned on this building, to whom do those profits go?

A. Well, they go in the general income of the Globe-Rutgers.

Q. And incidentally or finally to the stockholders?

A. Well, yes; to the extent that they pay dividends.

Q. Do you pay rent to the Golden Hill Company?

A. Yes.

Q. Is that charged against the Globe-Rutgers Company?

A. Yes, sir.

Q. And makes up one of its operating expenses of the home office?

A. Yes.

The Referee: Has your company other lessees?

A. I beg your pardon?

The Referee: Has your company, the Golden Hill Building Company, other renters?

A. Oh, yes; oh, yes. There is, oh, about ten tenants in that building.

The Referee: And do they all pay on substantially the same rate?

A. No, there is a big variation in the rates. The lowest [fol. 1473] rate goes to the Ocean Accident Company, which took the original mortgage on it when the building was built, and got two floors at certain rent, in accordance with the loans at that time; nearly twenty years ago, you see. Then comes the Globe-Rutgers and other companies interested in the building. They pay somewhat more than that. And then other companies; those other tenants who have no interest in the building, they pay still more; and then another thing, the long term leases, you see, are at a lower rate than the recently renewed or acquired leases.

The Referee: Is there a difference in the amount of rent paid on the distinction whether or not the tenant is a stockholder in the company or not—stockholder in the companies?

A. Well, yes. Yes, the companies that are stockholders are favored in the rental rate.

The Referee: They get a preferential rate?

A. Yes.

The Referee: That is all.

Mr. Jacobs:

Q. What is the monthly rent of that building?

A. It is about—roughly, it is about $10,000 a month.

Q. Now, does this Golden Hill Company own any other real estate besides this New York building?

A. No. It was formed to build that building.

Q. What was the name of the company which you said you had to attend at three-thirty today—American Smelting & Refining Company?

A. It is the American Smelting & Refining Company, yes. [fol. 1474] Q. Does the Globe-Rutgers own any stock in that company?

A. Yes, a lot of it.

Q. How much stock do they own in that company?

A. Well, I can't give you the exact figures. It is in the statement there—it must be—common and preferred stock together must be around 10,000 shares. I guess.

Q. What is it worth a share?

A. Well, preferred, worth about $100, and common at the present time worth about $57.00.

Q. What is the par value of the common?

A. $100.

Q. Where did you buy it?

A. Oh, we have acquired it at different times over a long period of years.

Q. What was it worth, the last of it that you bought?

A. The last we paid for, the preferred, was 66.

Q. And the common?

A. The last we paid for the common I gave about 39, somewhere around there.

Q. Does your company own any stock in these other organizations of which you are president?

A. Do I own any stock?

Q. No.

A. The company own any stock?

Q. Yes.

A. You mean the Globe-Rutgers?

Q. Yes.

A. No. They can't own stock in any insurance company.

Q. Do they own any stock in any of the other companies in which you are a director?

A. Oh. Well, let's see. Yes, they own a very large block of the Lawyers Title & Trust Company, where I am a director.

Q. Any others besides that?

A. No.

[fol. 1475] Q. Does the Lawyers Title & Trust Company own any stock in the Globe-Rutgers Company?

A. No.

Q. Does this concern you speak of, this smelting company own any stock of the Globe-Rutgers Company?

A. No.

Q. Does your company own any stock in any of the other companies in which you are a director and stockholder?

A. No. Let's see, I don't think I am on the board of directors in anything else—oh, yes, I am a director in the Submarine Boat Corporation, but of course they can't invest in that kind of security.

Mr. Folonie: Why?

A. Well, it is not considered stable enough. I think the insurance department would probably have something to say—but we wouldn't do it anyhow.

The Referee:

Q. What company is that?

A. Submarine Boat Corporation. I don't think their stock is going to be so bad, at that, but still, that is hardly a standard investment.

Mr. Jacobs:

Q. You own railroad stocks?

A. Yes, sir.

Q. When I say "you," I mean the Globe Rutgers.

A. Yes, sir, I understand that. Well, they own stock in the Delaware & Hudson; pshaw, I wish I had my list here. Louisville & Nashville. The Rock Island preferred. The St. Paul preferred and common, mostly preferred. Great Northern, Northern Pacific; Kansas City, Ft. Scott and Memphis, preferred; well, full list is somewhere on file.

[fol. 1476] Q. What was the capital of your company when it was organized? I mean when the consolidation took place in 1899?

A. It was $400,000, the two companies; each had $200,000 capital.

Q. Now, was any cash paid in in 1916, in your company?

A. I expect that was the year the other $100,000 was paid in.

Q. The other $100,000 was paid in in 1916?

A. All right.

Q. Then up until 1919, you had a $500,000 capitalization?

A. Yes.

Q. Your company had then been in existence 20 years—consolidation.

A. Oh, the consolidation—yes, the consolidation was in '99, yes.

Q. That is twenty years?

A. Yes.

Q. And during that period you had a $400,000 capitalization until 1916, at which time there was an additional $100,000 added?

A. Yes.

Q. Now, is it a fact that up to 1919, you had paid stock dividends of $200,000?

A. Yes.

Q. And cash dividends of $2,857,978?

A. Well, that figure I can't give you, because I haven't got it at hand.

Q. Is that about correct?

A. It sounds a little large to me. What year is that?

Q. 1919.

A. Well, I expect that is about right.

Q. And that was paid during this period most of the time on $400,000 capitalization and the last three years on a $500,000 capitalization?

A. Yes.

[fol. 1477] Q. Now, in 1909, was your stock worth $3,408,000?

A. I couldn't tell you that without looking that up.

Q. Is that approximately right?

A. What year.

Q. '09.

A. $400,000 capital, wasn't it?

Q. Yes.

A. Let's see if I can fixe it by anything I couldn't even guess without looking up the market prices. You have probably looked it up.

Q. Well, is that about right—$3,408,000?

A. How much is that a share? That is $2,000 a share—oh, no, it isn't either. Seven or eight hundred dollars a share, isn't it? Seven times four—about $800 a share wouldn't it? I wouldn't wonder if it was about right. You have probably looked it up.

Q. Now, ten years later, or 1919, your stock was worth $16,500,000, wasn't it?

A. Let's see, 1919, that was the year after the war closed, wasn't it?

Q. Yes.

A. Well, it was sold, I think, for about $2,000 a share, wasn't it? How much did you say?

Q. $16,500,000.

A. That would make it $14,000,000, wouldn't it? Oh, I should say—I don't think it sold any higher than, oh, 16 or $1,700 before that.

Q. You think $16,500,000 is approximately correct as the value of your stock in 1919?

A. No, I should say it is too high.

Q. How much too high?

A. Why, I think the stock was selling at about $1,750, if I remember rightly, and there was $700,000, was there—that would make it about $12,000,000.

[fol. 1478] Q. Didn't your company furnish figures indicating that your stock was worth that sum of money?

A. I don't know.

Q. 1919?

A. I don't know.

Q. You don't know. Now, during that ten years from 1909 to 1919, your stock increased in value from $3,408,000 to the figure that you think it was, something like twelve or thirteen million anyway, in 1919?

A. If it is—that is the millions offhand. I am guessing wildly. I am trying to follow you along without stopping and going and looking up anything.

Q. Well, is that about right?

A. I should say it probably is about right.

Q. And during that ten years you paid in addition dividends amounting to $2,145,000, didn't you?

A. Well, that is exactly ascertainable.

Q. Well, is that about correct?

A. Yes, I think so.

Q. Is it a fact that your company in five years ending 1920—that would be '16 to '20—earned $14,000,000 in capital and surplus of $6,500,000?

Mr. Folonie: I think the court has ruled on previous occasions, but so that we may not be in a position of possibly having waived it, we object to this question and this line of inquiry upon the ground that any profits or earn-

ings made elsewhere than the State of Missouri are not proper for consideration nor is evidence proper as to the amount of dividends paid out of general assets, nor the earnings out of the investment activities of the company [fol. 1479] which we contend are distinct from the underwriting department and that the sole inquiry is the underwriting profit or loss for the five year period antecedent to the order under review.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: It will not be necessary to reiterate this objection to the line of inquiry, of course?

The Referee: It will be understood the objection applies to this line of inquiry without repetition. Now read the question again.

(Question read by the reporter.)

Mr. Jacobs:

Q. That is an earning of $14,000,000 was on your capital and surplus of $6,500,000?

A. 1916 to 1920, inclusive? Why, without the figures at hand, I believe that is about correct.

Q. Now, Mr. Jameson, how much did your company earn on capital and surplus in 1921?

A. Well, I would have to——

Q. (Interrupting.) Can you give me an approximation as to 1921—that is year before last—how much did they earn on capital and surplus?

A. You mean that is including the receipts from investments, interest on investments?

Q. Yes.

A. And the excess of premiums over expenses and losses?

Q. Yes.

A. You want me to guess at it?

[fol. 1480] Q. Well, if you can give us an approximation of it.

A. Well, yes, I can give you that. It is—Oh, I should say two and half million.

Q. And what was your capital and surplus in 1921?

A. Why, we have got that right here (referring to document). The capital was $700,000 and the surplus is somewhere here—let's see, I have got a little book here that has got these statistics.

Q. All right (witness produces book).

Mr. Folonie: Do you want this piece of paper to line it up?

A. About $14,000,000.

Mr. Jacobs:

Q. Surplus of about $14,000,000?

A. No, surplus of about thirteen, and the capital was $700,000.

Q. Seven or six?

A. Seven. We paid in $100,000 and gave a stock dividend of $200,000 in 1916.

Q. You had an additional stock dividend of $200,000 which made the capital $700,000?

A. Yes.

Q. Now, take 1919, what did your company pay in in the way of dividends in 1919—that year?

A. $420,000.

Q. Those were cash dividends?

A. Yes.

Q. $420,000. Now, what was your stock dividend that year?

A. Nothing.

Q. How much did you increase your surplus that year?

A. $1,280,000.

Q. $420,000 dividends in 1919, and an increase in surplus of $1,280,000; is that right?

A. Yes.

[fol. 1481] Q. Now, let me ask you if in 1919, your rate of losses on your investments was not 1.28 per cent?

A. Rate of losses?

Q. Yes, on your investments in 1919?

A. I don't keep any such statistics. I don't know.

Q. You don't know. Did you lose money on your investments in 1919?

A. Why, we marked them down. We didn't lose any. The market had a violent fluctuation downward after the

war closed and temporarily the values were down. They have come up since.

Q. In other words, there are two ways in which you arrive at your question of losses; one, those securities which you have bought and which you actually market and take your loss, if there is one. That is the one loss, which you actually market and take your loss, if there is one—that is the only loss; on those securities which you mark down at the end of December 31st, because there has been a drop in the market so that there is a loss as compared with the prices at that time and the prices you paid for them?

A. Well, we don't recognize any loss unless on securities which are sold at a loss. We don't recognize fluctuations in the market as a loss.

Q. And in figuring losses for the preparation of reports do you—it would be wrong, would it, to include book losses of the kind I just discussed?

A. Well, it depends on what you are figuring for.

Q. Well, figuring the business, Mr. Jameson.

A. Yes. I agree to that. That a fall in the market price [fol. 1482] of securities that are unsold should not properly be charged as a loss against premiums received; certainly not.

Q. All right. Now, you are not in a position to say that you had a rate of loss in 1919 of 1 28/100 per cent?

A. No, I don't know.

Q. Did you have a loss?

A. I don't know, whether I did or not.

Q. You don't know?

A. I know we marked down our securities; prices of our securities.

Q. At the end of the year 1919, don't you know whether you had a loss on securities?

A. No. I don't think we did have any actual loss.

Q. You don't think you had an actual loss?

A. No.

Q. And if it should appear in your reports of your company that you did have a loss on investments for that year—I mean your reports to the State of Missouri—that means a book loss and not an actual loss due to the sale of securities?

A. Well, might have sold something at a loss. I would have to look that up; but it wasn't very heavy, if it was any.

Q. You understand I am talking about a general loss on all your investments?

A. No, we have never had a loss—general on all of our investments, generally.

Q. So that at the end of the year you would show a loss instead of a gain on your business investments?

A. Not unless you are going to count fluctuations.

Q. Well, you don't count that, you say, because you don't figure that should be counted?

A. No; not for that purpose.

[fol. 1483] Q. And if there is a relation in those reports of losses on securities, it must be the book losses about which we have talked, based upon the market fluctuations, is that right?

A. Well, I don't know. You are getting a little in too deep.

Q. Well, understand me——

A. (Interrupting.) I have no information about that.

Q. Understand me. You say that you did not have an actual loss?

A. I said I don't believe we had any actual loss to amount to anything. That is on sold securities.

Q. Yes, and you say that you don't count these book markings on fluctuations against premiums written or received?

A. No, you asked me if it was right to do it and I said no.

Q. You said no. Now, I am asking you, in the light of your statement, if you had no losses of any moment, whether, if there appear to be losses in your report upon investments they are not book losses?

A. I don't know.

Q. Well, they must be, if you didn't have them on the actual sales of securities?

A. Well, you will have to draw your own conclusions. Those statements are made up in accordance with prescribed rules for certain purposes and I can't foresee just what is in them, so I might be led far astray without knowing it.

Q. Well, I am just asking you to assume for the purpose of this question—and that goes into this record, of course—that your underwriting statement report or your other reports which you make to the State of Missouri, showed an [fol. 1484] investment loss in 1917 and '21—1917 to 1921, inclusive.

A. They do show an investment loss?

Q. I am asking you to assume that for the purpose of this question. Now, if that is true those losses are book losses, aren't they—based on merely fluctuations?

A. I don't know about that. I don't know whether they are or not. I didn't make up the statement and don't know on what basis it was made.

Q. But you do know, as chairman of the finance committee of your company, that you did not suffer actual losses from the sale of securities, of any moment?

A. I know that we didn't; yes, that's right. The actual sale of securities. That's right.

Q. All right. Very well. Now, Mr. Jameson, do you believe that the profits of your investment operations or banking operations should be reflected in the rates of the various states for fire insurance?

A. No, I don't think it has anything to do with the underwriting result; nothing whatever.

Q. Are those investments made from your premium reserve, in part?

A. They are made from the general funds of the company.

Q. Well, that includes your premium reserve, doesn't it?

A. Well, as I stated before, there isn't any tangible—such a thing as a premium reserve. The premium reserve is simply a liability that is kept up to determine financial responsibility of the company. You don't have a thing which you could take hold of—a premium reserve.

[fol. 1485] Q. But that book liability which is set up is representative of cash or securities, isn't it?

A. Why, no; not necessarily.

Q. How do you keep it, then?

A. Why, it is represented in the assets of the company which consist of outstanding premiums, cash and investments, mostly.

Q. Well, but your outstanding premiums—by that you mean premiums that have not been collected?

A. Yes.

Q. Well, that is not part of your premium reserve, is it?

A. I would like to know why not.

Q. You have got it in your hands, have you?

A. Well, you haven't got the reserve in your hands.

Q. Where is it?

A. That is what I say, it is an absolutely intangible thing. It is simply a mark set up whereby you may determine the financial responsibility of the company.

Q. How much of your premiums received, written——

A. (Interrupting.) I may just as well say the whole reserve is premiums outstanding.

Q. How much does the law of the State of New York require you to keep in a reserve of your premiums written or received?

A. Why, the statutory requirement is five years—is 9-10, and four years is 7-8, and three years is 5-6, I think—isn't it—and annual, 50 per cent.

Q. Now, you comply with that law, don't you?

A. Certainly; making up our statement, yes, but we don't take any funds and put them in a bag and label them "Reserve."

[fol. 1486] Q. Of course not, but you have the liability charged on your books, which is liability premium reserve?

A. We have an item set up, liability, called premium reserve, yes.

Q. That is represented either by money or securities, isn't it?

A. Not necessarily, no. It is represented in the assets of the company. May be outstanding premiums.

Q. Outstanding premiums are premiums uncollected?

A. Certainly.

Q. Well, that is merely a debt that is owing your company, isn't it?

A. Yes, but it is an asset.

Q. Do you figure that as part of your reserve?

A. That is all your securities are; a debt owing the company.

Q. Yes, but there is a difference between a debt that the ordinary insurer owes you and a first mortgage bond that you buy on some real estate here, isn't there?

A. Yes, one is a secured debt and the other one is not.

Q. Why, certainly, and there is a good deal of difference between a government bond and what Mr. Dewey in California owes you on an insurance policy?

A. Well, I would rather have the government bond.

Q. The fact is, Mr. Jameson, that when you sell a policy you get the money for it, don't you?

A. Generally do; get left once in a while.

Q. Your agent collects, doesn't he?

A. Yes.

Q. And remits to you?

A. Yes.

Q. Minus his commission?

A. Yes.

Q. The money comes into your hands, doesn't it?

A. Yes.

[fol. 1487] Q. Well, now, at least part of your liability that you have on your books and which you designate as premium reserve is cash on hand, isn't it?

A. I beg pardon?

The Referee: Read the question.

(Question read by the reporter.)

A. I can't say that it is cash on hand any more than you can say that any other part of your assets are.

Q. What is premium reserve?

A. Well, premium reserve is simply a liability set up by statute to determine the solvency of the company.

Q. And doesn't that mean that the statute of New York says you are selling insurance and when you sell it and collect on it on an annual premium or a five or a three year term policy or whatever it may be you have got to keep in a reserve of money or securities representing the money which you received from the insured in order to guarantee to that extent the solvency of your company? Isn't that what that law means?

A. Well, I haven't got the statute at hand, but I don't think it means that at all, if you are going to take it literally. I think it means simply this: That when you make up your assets and liabilities you have to put an item in there known as the reinsurance reserve in accordance with the percentages prescribed under the statute.

The Referee: Do you mean reinsurance reserve?

A. Yes. It has two or three different names.

Mr. Folonie: That was the old name in the old days, wasn't it?

A. Called it unearned premium.

[fol. 1488] Mr. Jacobs: What do you keep an unearned premium reserve for?

A. Well, as I say, we don't keep it as a tangible thing at all, but we do set up that liability in our statements; in our financial statements.

Q. Well, suppose a situation where all your policyholders who hold your term policies or policies in which the premiums had not been fully earned would cancel, what would you have to pay them back, the unearned portion of the premium, or where would you get it?

A. Get it out of the general assets of the company.

Q. Well, are those general assets—do they include the unearned premium reserve?

A. Well, as I say, I don't see how you are going to include something in a tangible that is an intangible thing itself.

Q. Well, you have a lot of money—securities—some of it is surplus, isn't it?

A. Some of it will be surplus if you discharge all the rest of the obligations.

Q. You have got a surplus right now, haven't you, and a big one?

A. Yes, we have got one, theoretical surplus, yes.

Q. Well, that is your surplus that you have got and it is represented by a lot of securities that you have on hand and cash, perhaps?

A. Yes; included in the assets of the company.

Q. Now, in that same fund and among those securities you have also an unearned premium reserve, haven't you, and you have the unearned premium reserve?

A. Well, the unearned premium requirements are contained in those assets, yes, but there isn't any——

[fol. 1489] Q. (Interrupting.) Don't think that I misunderstand the situation to this extent, that I think you have got a fund set aside somewhere or a lot of securities set aside somewhere and marked "Unearned premium reserve." You haven't got that, have you?

A. No.

Q. Your funds and securities are all lumped?

A. Yes.

Q. But you carry on the books of your company a certain liability which you denominate unearned premium reserve?

A. Yes.

Q. Now, that liability which you have entered upon your company's books is represented by cash and securities, isn't it?

A. Yes, it is—no, no—cash, securities, premiums and any other assets of the company.

Q. And securities?

A. All the assets of the company.

Q. Now, you make investments with these moneys?

A. Yes.

Q. And you have investments which are represented by securities which have been made out of moneys of that kind?

A. Yes; general money fund.

Q. And to the extent that you had an unearned premium reserve representing the business of your company, that money is invested in securities or in cash on hand; that is, you say, other assets?

A. Premiums outstanding and so forth. It is in those—those—it is represented in those funds, in those assets, yes.

Q. Now, those assets are earning money?

A. Some of them are.

[fol. 1490] Q. Some are and some are not?

A. Yes.

Q. Now, do you think that the earnings upon that portion of your assets which represent an investment of your reserve should be considered in arriving at a rate in the state?

A. No, I don't.

Q. Why not?

A. For about three reasons.

Q. All right; let's have them.

A. Well, in the first place, those funds are the savings of the company—mostly, and have got nothing to do with the profits of the business in which you are engaged.

In the second place, it would be almost impossible to make any calculation with any degree of accuracy in that

way; and in the third place, it would not amount to a hill of beans if you did.

Q. That is the third reason?

A. It would be more expense than it is worth.

Q. Now, let's start with the first one. You say that these investments represent the savings of the company. That is your first reason. Is that right?

A. Yes.

Q. Well, now, the savings of the company don't represent unearned premium reserve, do they?

A. Well, the unearned premium reserve, as I stated before, is not a tangible. You get right back to it again. Now you are making it a tangible thing again.

Q. Once you and I understand what a tangible and intangible thing is—you use the word "tangible"—that you haven't set aside a part of your securities and marked them as representing premium reserve. That's what you mean?

A. No, I don't. I mean a tangible thing has got to be something you can see or handle.

[fol. 1491] Q. Well, you mean—you can't handle your securities, can you?

A. Yes, but you can't allocate the entire reinsurance reserve to securities. You agreed with me a while ago that it was contained in the general assets of the company.

Q. You can handle your securities, can't you?

A. Yes.

Q. You can handle your cash on hand?

A. Yes.

Q. Your business beyond a certain period of grace that you allow your agents to remit is practically a cash business, isn't it?

A. Oh, I suppose you might say that.

Q. Now, with the money on hand for the policies you sold, that is something that you could take in your hands and let run through your fingers, isn't it?

A. No, because it is not labelled. What will I take?

Q. You take the position that as you don't keep separate your reserve from your general funds—that is, you only keep a book record of your liability to the extent of your unearned premium reserve, that therefore you can't tell what has been invested of the premium reserve and what might represent surplus?

A. Yes, sir.

Q. And so the proceeds of any such investment should not be considered in arriving at rates?

A. I do.

Q. That is your position?

A. Yes.

Q. Now, what do you say about a conflagration hazard? What do you think of the conflagration hazard?

[fol. 1492] A. Well, of course a conflagration hazard is the risk of a tremendous unexpected catastrophe, which is not ordinarily provided for or provided against—guarded against.

Q. Now, you are familiar, because you are a high man in insurance circles and have been for a good many years, with the general practice of stock fire companies with reference to conflagrations, aren't you?

A. Yes, I think so.

Q. And it has been your practice, that is, the practice of the companies, upon the happening of a conflagration to so increase the rates as to meet, at least as far as possible, the losses of the conflagrations. I mean by that extraordinary losses by conflagration—hasn't it?

A. Why, that in past times has been allowed to go without taking any account of it to any extent except as an individual underwriter would revolve it in his own mind; but of late years it is like the rest of the insurance business, it has been handled a little bit more scientifically, and now the proposition is that you can figure it up on the experience of 40 or 50 or 60 years back and you can set up a safeguard against it. In the old days, all the fire insurance companies went broke whenever they had one of those conflagrations.

Q. How do you set up a safeguard?

A. By accumulating these surpluses.

Q. You mean a conflagration hazard surplus?

A. Yes.

[fol. 1493] Q. Do you keep one?

A. Well, we don't keep it separate, but we have it in mind when we have held onto our earnings until we have 14 or 15 million surplus. We want our policies to be conflagration-proof.

Q. But you don't set one up, do you?

A. Not separately, no.

Q. How are you going to separate it?

A. I mean we don't make a separate item of it in our liabilities.

Q. You don't go as far on that as you do on your unearned premium reserve, do you?

A. No.

Q. How do you separate it—how are you going to separate it?

A. You could set up a conflagration reserve and even fix a standard for it, if you wanted to.

Q. But you don't?

A. No, haven't yet. But we include all that in our general surplus funds.

Q. That is, you carry a surplus?

A. Yes.

Q. You don't know just how much your surplus is, do you?

A. Well, we knew what it was at the end of the year, yes.

Q. Do you just simply have a lot of money and securities and assets on hand of which you knew a part was unearned premium reserve and you knew the balance was the surplus that you had paid—that you had, paid—that you had, after you had paid your expenses, didn't you?

A. It is, of course, a calculated reserve; not exact. Certainly. The outstanding losses and the reserve—policies if allowed to run out might take more than we have got set up as a reserve, or it might take less. It is inexact, but approximate, as near as it can be calculated.

[fol. 1494] Q. In writing up your reports for the state of Missouri, in arriving at your loss ratio, Mr. Jameson, do you include those items of loss which happen in your Inland Marine Insurance, along the line that you suggested you did business this morning?

Mr. Folonie: Read that question.

(Question read by the reporter.)

A. We don't put in our loss figures any losses except what have occurred on fire policies?

Mr. Jacobs:

Q. Shouldn't beyond them?

A. No. No.

Q. Now, how about automobile collisions? Is your loss ratio—does your loss ratio appear for that on your reports?

A. No, not in our fire loss ratio.

Q. Excepting fire, I say—may I—what did you say then?

A. I say it doesn't appear in our fire loss ratio.

Q. And should not appear?

A. Certainly not.

Mr. Jacobs: I think that is all.

Cross-examination by Mr. Folonie:

Q. In other words, figuring ratios, if you are figuring the classes you figure each class by itself to the exclusion of all the others?

A. Certainly.

Q. The question has been asked of other witnesses, which was not asked you, about what percentage of the stock of the Globe-Rutgers have the officials and directors of your company held, or do they hold?

A. Of the Globe-Rutgers?

Q. Yes.

A. Why, the officers and directors of the Globe-Rutgers own about 75 per cent.

[fol. 1495] Q. You mentioned some other companies of which you are an officer and with which you were connected. Do those other companies make as much money as the Globe-Rutgers?

A. No. No other company does in the world. Has—but I don't know whether we are going to keep it or not.

Q. That is——

Mr. Jacobs: That is what you said yesterday about the Home, Mr. Folonie.

Mr. Folonie:

Q. You were asked about whether you allocated overhead to Missouri or you didn't. Do I correctly understand you, that you do not in fact allocate it in your annual statements and similar reports but the information is there from which it can be allocated if anybody wants to do it for any purpose?

Mr. Jacobs: One minute. The defendant objects to the question because this witness never gave any such testimony as the latter part of that question.

Mr. Folonie: I will divide it into two parts.

Q. Do I correctly understand you that no allocation of overhead expense is made in your annual statement blanks to the State of Missouri?

A. No, there is no allocation made in Missouri whatever.

Q. Now, if anyone desired for rate making or any other purpose to ascertain the allocated or proportional part of the overhead referable to Missouri, is the information in that blank such that that allocation can be made by anyone who desires to make the computation?

A. Well, yes; certainly.

[fol. 1496] Q. In answering one question of counsel, I think you stated in substance that if you had a $100 premium that in keeping your premium record on your books you would credit $75 net receipts and you would debit the account $25, the amount of the agent's commission. Is that what you said?

A. Yes.

Q. In other words, in keeping the agent's balance, your agency balance account, you would credit the agent with the amount of his remittance, would you, namely $75, in that case?

A. Yes.

Q. Why would you charge him with $25 on that when he had already retained it?

A. Well, that is the one and the same thing. I didn't say with reference to an agent, anyway. I said any premiums of the company on which there was a 25 per cent commission; the moment that is written the company has $100 in its premium account and has $75 in its outstanding premium account and has $25 in its liabilities for commission. You see?

Q. Now, in making up your premium account do you enter that as $75 or $100, in making up your premium returns?

A. As $100.

Q. Counsel has asked you about your having requested an increase of rates in Missouri. On whom did you make that request?

A. Why, Mr. Candee, the insurance commissioner.

Q. What was that in reply to?

A. Let's see how that came about. I don't know exactly how or what was the immediate cause of the action, but I read the letter and approved it, under the circumstances.

[fol. 1497] Q. Has your experience during the period 1917 to 1921 in the State of Missouri been profitable or unprofitable?

A. Why, it has been unprofitable—one or two of those years may have been all right but the last two or three have been very bad indeed.

Q. And these dividends counsel has been inquiring about, in addition to surplus and so forth, did you make them out of Missouri during that period?

A. No.

Q. In calculating your surplus, which counsel has asked you about, its appreciation and depreciation, or the additions to it and the lessening of it from year to year in making the calculation on the amount of that surplus is the increase or decrease in the market value of securities from one year to another, does that enter into the increase and decrease in your surplus or does it not?

A. Why, some years it increases the surplus in the statements and other years it decreases it.

Q. What I am getting at is not which effect it has, but does the increase and decrease in the market value of securities which you hold, and do not sell, enter into the calculation of the net surplus figure which you have been testifying about? Is it reflected in that, or not?

A. Well, not really, no. I hardly know how to answer that question, because you know those statements are made up every year on valuations that are furnished the companies by the Insurance Departments. And, of course, comes the 31st of January, if they furnish you with a set of security values that are lower than the year before, why, your surplus is reduced in your statement, but not actually.

[fol. 1498] The Referee: Do I understand that the Insurance Departments of the various states furnish you with a valuation of the securities which you hold as a part of your surplus?

A. We get ours from the State of New York. I think they are used generally by all Insurance Departments. Aren't they, Mr. West?

Mr. West: Yes. The superintendents appoint a committee to make up these valuations.

The Referee: In other words, specifically, assuming that a given company owned, say, 1,000 shares of Central Railroad stock as a part of the investment of its surplus and general funds—the Insurance Commissioner in the State of New York or a committee of insurance commissioners would furnish you with a valuation of that stock as of December 31, 1922?

A. Yes.

Q. And that valuation would be used in making up your report?

A. Yes.

Mr. Folonie:

Q. And does that valuation they furnish you, does it go up and down from year to year as the security market goes up and down?

A. Yes.

Q. So if the market price at which that particular security is being sold on the market is 50 per cent more December 31st than it was December 31st last year, you will be directed, more or less, to that extent, to increase the value of that security on your books?

A. Yes.

Q. And then in computing your net surplus are those values which you have so used—do they enter into your calculation of what the amount of your assets is from which to calculate your surplus?

A. Yes, to that extent, yes.

[fol. 1499] Q. Even though the securities are held and not sold.

That is all with this witness.

Redirect examination by Mr. Jacobs:

Q. What is your stock worth today, Globe-Rutgers?

A. Quoted in the newspapers at $650.

Q. What is its par?

A. Par is 100.

Q. 6½ for 1. That's right isn't it.

A. Yes.

Q. Do you know the percentage, basing the same upon your capital stock, of course, of dividends you paid in 1921?

A. What is the question?

(Question read by the reporter.)

A. Well, the dividends paid in 1921 was $420,000.

Q. On $700,000?

A. Yes.

Q. That would be what per cent?

A. That would be 60 per cent, it was.

Q. And 60 per cent is based in part upon $200,000 worth of that capital stock which is the result of a stock dividend, isn't it?

A. Yes. But look at the enormous business the company does. That is why; that is the why of those results.

Q. In other words, Mr. Jameson, volume of business is what makes the money in the insurance world, isn't it?

A. Oh, no.

Q. Does it or doesn't it?

A. I wish that is all there was to it.

Q. Well, that is worth money to you——

A. (Interrupting.) Most people get too much of what they ought not to have.

[fol. 1500] Q. That is what furnishes you with the funds with which you make your investments, isn't it?

A. Well, the biggest part of those that we invest is the saving of—instead of their paying out any dividends, it was a policy adopted a good many years ago to build up a surplus and make the company conflagration-proof, and at the same time you increase the prestige of the company with the public and it is easier to attract good business and a larger amount of business. As you asked me that question—I think the first idea is to get good business, and of course, after that, the more volume you can get together, why, the better.

Q. Now, those savings, that surplus, comes from business done, of course—premiums collected?

A. Well, that, and the way we handled our investments.

Q. Yes. But in Missouri you fix the rate upon your premiums received, as you stated a while ago, I believe and your losses incurred and expenses?

A. Yes.

Q. And your rate is based upon that?

A. The rate is based——

Q. (Continuing:) The rate is based upon the combined loss and expense as to premiums in the State of Missouri?

A. Yes. In other words—with an indirect relation from conflagration hazard, which as I say it has been—it hasn't had any attention paid to it until lately.

Q. In other words, under the law there your rate is taken care of by basing it upon the considerations you just stated?

A. Yes; expenses and the premiums.

[fol. 1501] Q. So after all the chief thing is to get the volume of business, isn't it, so as to furnish the basis for investments?

A. Well, you see, the whole thing goes by ratios. I do believe that the bigger average you have, that is the bigger volume you have, the more uniform your experience is liable to be; not awfully bad one year and awfully good another year. But that is not the prime factor. The prime factor is to get good business on your books.

Q. But that situation in Missouri and those few states that have laws like Missouri, with reference to fire insurance is pretty well taken care of by the method provided by statute for the making of rates, isn't it?

A. Yes.

Mr. Jacobs: I believe that is all.

Mr. Polonie:

Q. You stated in calculating profits or losses you took into account premiums received. Is that what you meant to say?

A. Premiums written, and losses incurred.

Q. Well, you said a while ago something about earned premiums. Now, which do you mean?

Mr. Jacobs: One minute. I submit to the court he never did say anything of that kind. He has repeatedly stated upon what he based his——

Mr. Hogsett (interrupting): You are mistaken, but even if that were true, we have a right to cross examine.

The Referee: The record will show what the witness stated. The objection is overruled.

[fol. 1502] (To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: What is the question?

Mr. Folonie: The question is——

The Referee (interrupting): Read the question.

(Question read by the reporter.)

A. You will have to say in what relation.

Mr. Folonie:

Q. Whether you mean written or earned premiums in making calculation of profit or loss in a given territory.

A. In making a calculation of profit or loss, we will say in Missouri, arriving at a proper rate, you would take into account the premiums earned and the losses incurred and the expenses thereon.

Q. And are the written premiums necessary to be known to calculate the amount of the earned premium?

A. No—oh, well, let's see. Well, certainly, you would have to know what you had written and then deduct unearned.

Mr. Folonie: That is all.

Mr. Jacobs:

Q. You didn't say anything about earned premiums being the basis of your calculation until Mr. Folonie suggested it just a moment ago, did you?

A. I think I did.

Q. Didn't you say written premiums a number of times?

A. Not unless it was inadvertence. I said that was the only way you could calculate it accurately.

Q. Isn't it a fact you specifically said written premiums [fol. 1503] as against incurred losses and incurred expenses?

A. I don't think so. To arrive at your loss ratio and your rate?

Q. Yes.

A. I don't think so.

Q. At any rate, now you say you base it on earned premiums?

A. Oh, yes. Shouldn't do it on anything else.

Q. How do you arrive at earned premiums?

A. If you have gotten a policy and it has run out, the premium is earned.

Q. How do you calculate it?

A. Every month, on your books.

Q. Is that the way you arrive at it?

A. How do you mean?

Q. Is that the way you or your accountants arrive at premiums earned in making reports to the State of Missouri?

A. We take them off the books every quarter.

Q. Premiums earned, that means that part of the premium which has actually been earned out of the policy?

A. Yes.

Q. And the balance of it is that intangible thing we have been talking about called unearned premium reserve, isn't it?

A. Yes.

Q. Now, that is money which you have received in advance from the policyholder, isn't it—the unearned portion?

A. Yes, we received it.

Q. And is held——

A. (Interrupting.) I don't know whether held or paid to someone else for a loss.

Q. I hadn't finished my question. It is held for what [fol. 1594] purpose, now—this reserve?

A. Well, I don't know that it is held. As I say, we are back to the same old thing again, you can't hold something intangible. If you can trace a certain thing in there with a reserve—unearned, today—you might find you had actually paid it for a loss that had happened a month before.

The Referee: Would it be accurate to say it is considered, instead of held?

A. What would the question be then?

The Referee: Instead of this reserve being held actually and physically and separately set apart, it is considered in your business, as if there was a fund of that kind; is that a more accurate expression?

A. I don't think that is any more accurate than the other one. It still makes it tangible, you see. There is a great confusion about reinsurance reserve.

The Referee: I find there is.

A. If we could only get some of it and do something with it, that would be a different matter.

The Referee: Mr. Jameson, I wish you would tell me what factors in your judgment should be taken into consideration in determining what is a reasonable rate of writing fire insurance.

A. Well, it seems to me you have got it there now. I can't see what else you can do. You take a five year period or experience and you take your losses and you take your premiums and expenses. Now, if you——

The Referee (interrupting): Pardon me, right there. Do you mean in a given state or throughout the entire country?

[fol. 1505] A. You have got to do both. You have got to consider both. First you consider in that state, and then you have got to consider the general average throughout the country. Conflagration is a general matter entirely and not a state matter.

And suppose you come out—of course, the expenses should be reasonable and the laws should be such as not to encourage arson or any kind of cheating in settling losses and so on.

You take that experience for five years, what can you do any better than to set up for the next five years your standard rating, and if the next five years the companies make more than a reasonable profit, or they lose, then you make another one. I don't see how you can handle it any more accurately than that.

The Referee: Very good. Now, what do you consider in determining what constitutes a reasonable profit?

A. Well, of course, that is something that is a matter of opinion. I should think—of course, different classes of business, you know, can be handled by different rates of expense. You can't handle dwelling house business at the

rate that you handle risks that produce thousands of dollars' worth of premiums on every policy; and those graded commissions that have been adopted around—they fix a higher commission on that class of business than what they do on the other. Some places the commissions are as low as 10 per cent; 10 per cent up to 30 per cent in some places. They vary a little bit.

[fol. 1506] To bulk the whole thing together, the whole business of the United States in one lump and say what should be a reasonable expense under present conditions and with the present rate of taxation and other requirements, I should say that a general agency business ought to be conducted on about 35 per cent. That is my opinion.

The Referee: You mean by that 35 per cent of the gross receipts?

A. 35 per cent of the gross premiums, yes.

The Referee: For expenses?

A. Total expenses, yes; including taxes. Not income taxes, but the regular taxes.

The Referee: The last question was, what do you consider to be a reasonable profit—the factors which you consider in determining what is a reasonable profit?

A. I should say that the companies ought to make about 8 to 10 per cent.

The Referee: On what basis?

A. Including conflagrations.

The Referee: About 8 or 10 per cent of what?

A. Of the gross premiums. That is, considering the conflagration hazard, which has lately been advanced, as worth 3 per cent. Now, this is only a starting point. The next five years you take your experience, and if the companies are making well, why, you reduce it some again, and if they are getting the worst of it you put it up some.

The Referee: Would it be possible in the insurance business to calculate the per cent which would constitute a rea-
[fol. 1507] sonable profit, using the capital of the company as the basis of calculation?

A. Oh, I don't think the capital of the company has got a thing to do with it at all.

The Referee: Then your answer to that question is no?

A. I beg your pardon?

The Referee: Then, I say, your answer to that question is no?

A. Yes. My answer is that the capital of the company is not the consideration upon which you base the amount of the profit. It is—the main thing is the volume of business and the total liabilities assumed. Some people assume just as much liability with 1 million capital as somebody else with 10 million.

Mr. Folonie: If the standard of the best company in the business, or the company making the most money of any company in the business, were adopted as the standard by which to judge all the companies, would that be a just measure by which to regulate or fix the rates in your judgment as to all companies involved?

A. Well, no. The average of all the companies should be used. Of course, if we want to freeze everybody else out of the business, why, then you would adopt the standard of the most successful and most fortunate company, but human affairs can't be run that way.

Mr. Folonie: Well, do you think it is desirable they should be?

[fol. 1508] A. No, I don't; but I think the average is fair, and that means that those that can't produce an average experience will have to give up, and that is the natural and right thing that it should be.

Mr. Folonie:

Q. That naturally means that the company that is at the top of the list will make a great deal more than the man who is at the average or below the average.

A. Bound to do it.

Mr. Folonie: That is all with this witness.

The Referee: That is all.

(Witness excused.)

Mr. Folonie: I have an affidavit here which has just been handed me, of Dr. S. J. Nelson, who says that Mr. Henry Evans, whose presence has been asked for here, is confined to his home and that he is physically unable to testify or be interviewed on any business matter, and will be so disabled for several months. He is a physician and has him in his care. I will file that affidavit in the record.

(Which said affidavit is in words and figures as follows, to-wit:)

State of New York,
County of New York, ss:

Personally appeared before the undersigned, S. J. Nilson, who on oath says that he is a practicing physician, residing in the Borough of Manhattan, City of New York, County [fol. 1509] of New York, State of New York. Deponent says that Mr. Evans has not been attending to business for some time, and is at present confined to his home and is physically unable to testify or be interviewed on any business matter whatever, and will be for several months.

(Signed) S. J. Nilson.

Sworn to before me this 16th day of October, 1923. (Signed) R. D. Hyer, Notary Public, Queens County. No. 2483. Certificate filed in New York County. N. Y. Co. clk's No. 77. Reg. No. 5136. Commission expires March 30, 1925. (Seal.)

Egbert W. West, called as a witness on behalf of the defendant, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Jacobs:

Mr. Folonie: This witness is presented pursuant to the stipulation.

Mr. Jacobs:

Q. What is your name?

A. Egbert W. West; president of the Glen Falls Insurance Company in a hick town known as Glen Falls.

Q. Where is Glen Falls—is that in the State of New York?

A. Yes, sir; 200 miles north of New York City; due north, sir; near the Canadian line and on the bootleg highway between Montreal and New York City.

Q. A much traveled highway, I have no doubt.

A. Very much so; goes right by my door and keeps me awake all night.

[fol. 1510] Q. How long has your company been in existence?

A. I think the records show that we were organized as a mutual company in 1850, although we were claiming, I think—some of my predecessors got it as being organized in 1849.

Q. As a mutual company?

A. Yes.

Q. Are you now a stock company?

A. Yes, sir. In 1864 it was turned into a stock company.

Q. And is at present?

A. And is at the present time, yes, sir.

Q. Have you—how long have you been president of it?

A. Why, I should think it was about five years; I really couldn't tell. Having been with the company all my life, I can't remember the successive offices which I have held, but I think about five years I have been president; four years, anyway. Put it four years.

Q. What position did you have with the company before you became its president?

A. Vice-president.

Q. How long were you its vice-president?

A. I should think about four years.

Q. Prior to that in what capacity did you serve this company?

A. I was secretary before that.

Q. For how long?

A. I should say for three years.

Q. Back of that, what were you doing?

A. I was assistant secretary for two years.

Q. Your home office is at the location you stated, Glen Falls?

A. Yes, sir.

Q. Have you agencies scattered through the United States?

A. Yes, sir.

[fol. 1511] Q. Do you do any business outside of the United States?

A. Yes, we are in Canada and we do some foreign business, with a number of other American companies; under the head of the American Farm Insurance Association.

Q. Is that a combination of American companies which are engaged in foreign business, writing of foreign insurance?

A. Yes, sir. It is an association, if you please, rather than a combination.

Q. Have you general agencies scattered in the country or just ordinary insurance agencies which report direct to the company?

A. We have both.

Q. Have you got the country zoned?

A. Well, zoned in what respect?

Q. Have you got it divided into sections over which you have some offices located somewhere within that section?

A. I think perhaps if I just tell you that we have five states in the south under a general agency and all the rest is under our direct control from the home office.

Q. Where is the agency located in those five states in the south?

A. At Columbia, South Carolina. That is a general agency having charge of North Carolina and South Carolina, Georgia, Florida, and Alabama.

Q. What kind of insurance do you write?

A. All kinds; all kinds that is permissible under the laws of New York for fire companies to engage in.

Q. Well, by that you mean you write fire insurance?

A. Yes, sir.

[fol. 1512] Q. You write insurance against windstorms?

A. Yes, sir.

Q. And against hail?

A. Yes, sir.

Q. And lightning?

A. Yes.

Q. Do you write marine?

A. Marine insurance.

Q. And inland marine?

A. Inland marine.

Q. Automobiles?

A. Automobile.

Q. Earthquake?

A. Yes.

Q. Registered mail, parcel post?

A. Registered mail, parcel post and tourist baggage.

Mr. Folonie: War, riot and civil commotion?
A. Yes; war, riot and civil commotion.

Mr. Jacobs:

Q. Now, what is inland marine insurance?
A. Inland marine is a marine business which has to do with interior, not ocean going, vessels; and sometimes also includes transportation business which may be on the railroads or on truck.
Q. What does it include besides transportation on railroads and on truck?
A. It includes canal insurance and river insurance and lake insurance. That was all termed inland marine.
Q. You make certain reports or report to the State of Missouri each year, I presume?
A. Yes, sir.
Q. You do business in the State of Missouri?
A. Yes, sir.
Q. How long have you been transacting insurance business in the State of Missouri?
A. I really couldn't say, but it is all of thirty years.
Q. Do you recall an increase in rates in January, 1920, in the State of Missouri?
[fol. 1513] A. I couldn't, no. I don't specifically look after some of those details. I wouldn't recall that, no, sir.
Q. You don't know about that?
A. No, sir.
Q. You know nothing about the circumstances under which the increase was had?
A. No, sir.
Q. And you don't even remember there was an increase?
A. I do not.
Q. Do you execute the annual reports of your company to Missouri?
A. Yes, sir. If I am home I do. If not, the vice-president does.
Q. What report do you make to the State of Missouri?
A. We fill out the regular blank which they send us, showing all of our transactions for the year.
Q. What do they cover?
A. Covers a very complete detail of all of our premiums on the various classes; covers the amount of business which

we have done in Missouri. Also shows the expenses all over the country; our losses, too. Shows the amount of reinsurance which we may have effected.

Q. What do you think the units of cost or expense are for re-insurance? I mean by that in addition to the writing of direct insurance.

A. I don't quite catch you. Units of cost of re-insurance?

Q. Reinsurance provides some additional cost over the original writing, does't it—of direct writings?

A. Yes.

Q. Would it be as much as 4 units, or 5 units?

A. What is a unit?

Q. Well, figuring on the basis of 100 per cent.

A. Would it be 4 per cent, you mean?

[fol. 1514] Q. Yes.

A. You mean, what is it that we receive?

Q. No, what is the additional expense of reinsurance over the direct?

A. Of our effecting reinsurance on a portion of our business, you mean?

Q. Yes, the writing—either the ceding of insurance or the taking of insurance from other companies? What is the general increase in expense over and above the direct writings, of reinsurance?

A. Well, there is no increase. It is regarded as a decrease, because it is surplus business which you wouldn't, if you had no facilities for placing, you wouldn't accept at all, so you have got just that much more of volume to charge your overhead to, your general overhead to. We generally figure that we can get 2 or 3 per cent more than that transaction has actually cost us in the acquisition, and our reinsurance labor in the office—they report in the home office that we can well afford if it is a desirable kind of business to handle it and charge it out to our reinsurers.

Q. Now, in direct writings the matter of expense with reference to general expenses, exclusive of agency commissions, which I presume are divided after all in the matter of reinsurance, all wash out about equally, but outside of the agency commissions, the general overhead expense of all kinds and character is the same whether you cede any of the insurance you write or whether you keep it all, isn't it?

A. No. If we kept it all the general overhead naturally would be less.

Q. Why?

A. Because we have a larger volume to charge that overhead to.

[fol. 1515] Q. I understand that, but you are speaking relatively. I am speaking absolutely. When you take a million dollar policy and handle it on your books——

A. (Interrupting.) We don't take that.

Q. Or $500,000, or whatever you do take—I am merely using the figure by way of illustration—or whether you took a $25,000 policy, your actual work and expense attached thereto is the same, isn't it?

A. Yes.

Q. So what I mean is, whether you retain it all or whether you cede it, that overhead expense would be the same, wouldn't it? I am not talking about relatively.

A. You are talking about ratios, or dollars and cents?

Q. Not ratios, just dollars and cents.

A. Well, it would be just the same.

Q. When you cede it there is an additional expense on the part of the company which receives it?

A. Yes.

Q. So there is a duplication of overhead expense there on that same policy, isn't there?

A. Yes, to a certain extent.

Q. In the question of reinsurance, would you say that 4 or 5 units would be a fair estimate of the additional cost in the way of expense of insurance?

Mr. Folonie: 4 or 5 per cent of what?

Mr. Jacobs: The witness hasn't asked me. The witness asked me a while ago and I answered him.

A. Yes, you mean 4 or 5 per cent and not units. 4 or 5 per cent would mean that per cent on the premiums that you are reinsuring.

Q. I am figuring that per cent on the basis of 100 per cent in the matter of expenses.

[fol. 1516] A. Oh, you are not figuring 4 or 5 per cent upon all of your premiums?

Q. I am not figuring on premiums at all. I am figuring it on the expense of handling the business, whether or not in addition to the overhead that reinsurance would operate to increase that expense 4 or 5 per cent.

A. No; it operates to decrease it.

Q. A little while ago I asked you if it would cost just the same to handle the big as the small policy, as a matter of overhead expense, and you said yes; and then I asked you if you ceded part of it if the expense was not duplicated, and you said yes, didn't you?

A. Yes, but the receiving company gets that for less than they are getting their own direct writings. For instance, we cede to the Great American Insurance Company, if you please——

Q. (Interrupting.) You are talking about commissions now, aren't you? I am talking exclusively of commissions.

A. We cede, for instance, the Great American Insurance Company $100,000 in premiums in the year, and they allow us 30 per cent commission; just as an illustration—not that we do that with that company—but they allow us 30 per cent upon that business. Now, they place $100,000 of business on their books at 30 per cent. They have done it in bulk fashion and very little detail cost to themselves.

Now, we, in selling that to them at 30 per cent, have sold them business that costs us about 23½—in acquisition cost. [fol. 1517] Now, in addition to that there is about 3 or 4 percent—it is a little difficult to measure that cost but probably 3 or 4 per cent is sufficient—of general expense connected with the effecting of that reinsurance upon our records through the office.

So that we have sold to them at 30 per cent a large block of reinsurance which costs us, probably, not over 27 per cent; thereby we obtain 3 per cent apparent profit to apply upon our other general overhead expense.

Q. Well, what happens to that when they handle it? They have got to handle it—their overhead goes on with that part they acquire, doesn't it?

A. They handle that in bulk. Not in detail, such as a specific risk which they may be insuring themselves.

Q. But they have all the expense of their officers and clerical help and all the overhead expense to handle that reinsurance that they take, that you cede to them, just the same as if it was an original acquisition?

A. Oh, no; not near.

Q. I don't mean to say the cost of acquisition, but I mean once it is in their office.

A. No, not near so.

Q. Broadly speaking, then, do I understand you to say that by acquiring insurance in the original writing and that by a system of reinsurance that it is less expensive than if there was no reinsurance at all—take it all the way around?

A. Yes. Yes, it is less expensive.

Q. Less expensive in what way?

A. To us, for instance. We can't carry this liability—if we can't carry this liability, we reinsure whatever our judgment indicates to us we can't carry. Therefore we pass it over to others and the result of that turnover is [fol. 1518] that we have got 3 per cent profit to apply to our general overhead.

Q. What happens to the company that acquires the insurance?

A. Well, they found it profitable.

Q. Yes, but there is a certain expense they bear, isn't there?

A. Oh, yes.

Q. By a system of reinsurance is there any additional expense attached to it? Is there no expense through the handling of insurance twice?

A. The expense of reinsurance is not near as great, either on the part of the ceding company or the accepting company, as it would be to carry on direct business.

Q. By that you mean, then, that it is cheaper and costs less money?

A. Yes, sir.

Q. By the system of reinsurance?

A. Yes, sir.

Q. Now, Mr. West, you say that you make these annual reports, and have described the contents of them.

A. Yes, sir. My office does. I personally don't do it, of course.

Q. Well, you execute them, don't you?

A. Yes, sir; I look them over.

Q. And that includes your premiums that your write in the State of Missouri?

A. Yes, sir.

Q. And includes your expenses and your losses?

A. Yes, sir.

Q. And your information about your general business in the company?

A. Yes, sir.

Q. Now, do you allocate expenses to the State of Missouri?

A. Only those which belong directly to the state, that [fol. 1519] have a direct charge; if it is a direct charge for business in that state, then it is always allocated to it.

Q. What kind of an expense would that be?

A. That would be the rating bureau charges and special agents.

Q. You mean rating bureau in Missouri?

A. Yes, sir.

Q. Go ahead.

A. Special agencies that we may have in Missouri; only. And taxes of Missouri. Any direct charge of that nature we can always allocate.

Q. You don't allocate those direct expenses, do you?

A. Those we do.

Q. What do you mean by allocation?

A. I mean we charge them up on our state account to the state to which they belong.

Q. What do you mean by the word allocation?

A. Well, I mean that in figuring up our state record we distribute all of those specific charges to the various states in which they originate and in which they belong and which we can easily trace as belonging to that state. Those are the only expenses that are put in your report sent to the State of Missouri, those, mind you—I don't believe the Missouri State report call for any allocation of expenses. I think all we show there is our expenses everywhere, all over the country and in the United States or foreign lands.

Q. You mean by that you do not put into the report you make to Missouri direct expenses of the state?

A. No, sir, I don't think so.

[fol. 1520] Q. But you do put in, according to your understanding, your expenses generally over the country?

A. Yes, sir, I think so.

Q. How do you put those expenses in?

A. Put them down as may be called for by the blank.

Q. Yes, but how do you put them in?

A. Well, we put in stationery, advertising and supplies, postage, express and telegraph, legal, board charges or rating bureau charges, maps——

Q. Salaries?

A. Salaries.

Q. Rents?

A. Rents, yes, sir; all of those regular charges that we have.

Q. All the expenses that your company might have?

A. Yes, sir.

Q. As a country-wide matter?

A. Yes, sir.

Q. Is that your understanding of the report which you make to the State of Missouri for the purpose of furnishing the basis of rate-making?

A. Oh, no.

Q. Well, tell me what your idea about it is, then.

A. If we were going to prepare a report for a state for the purpose of making rates, we would then get up and allocated to that state all the specific charges which belonged to that state.

Q. And what else?

A. And then we would take its proportion of the other general overhead that should properly belong.

Q. Do you know how rates are made in Missouri?

A. Only in a general way.

Q. What is your general idea about it?

A. I understand it is under the Dean schedule, as a rule.

Q. Under what?

A. Huh?

[fol. 1521] Q. I say, under what?

A. The Dean schedule.

Q. I don't know what that is. But what is your idea about it?

A. Dean schedule is a standard schedule for making rates.

Q. Well, who makes the rates in Missouri?

A. I think some rating bureau.

Q. You don't know?

A. No.

Q. Did you ever hear of the Missouri Inspection Bureau?

A. I might have, yes, sir.

Q. What is it?

A. I couldn't tell you, unless it is for the purpose of inspecting and making rates, or recommending rates.

Q. Who keeps it up and who maintains it and what is the personnel of it?

A. I couldn't tell you.

Q. You don't know?

A. I haven't any detail knowledge of that at all.

Q. Isn't the Glen Falls Company a participant in this organization?

A. I wouldn't be surprised—if there is such an organization.

Q. Don't know anything about it, then?

A. Don't know the first thing about it.

Q. Don't you know how rates are made in Missouri?

A. Only in a general way.

Q. Is it your understanding they are made by the State of Missouri, or they are made by the companies, or by the companies individually in competition?

A. My understanding is it has been made by the companies.

Q. In what way?

A. By the selection or the employment of one inspection bureau or rating organization.

[fol. 1522] Q. Well, then, you do know that the companies have got an organization which makes those rates there, don't you?

A. I have a very general knowledge as to that.

Q. Do you know that your own company is a member of it?

A. If there is any such organization of that sort we are a member, I can assure you that.

Q. Your best understanding, at any rate, is that the companies maintain an organization and rating bureau or inspection bureau which promulgates rates for Fire Insurance Companies in the State of Missouri?

A. Yes, sir, I think so.

Q. Do you know upon what they base the rates that they promulgate in the State of Missouri?

A. I have always understood they based upon the Dean schedule, which produces a uniform rate in most all of the states where it is used. That is quite wholly inadequate, in my judgment, though, for Missouri.

Q. That is your idea, however, of how the Missouri Inspection Bureau fixes rates, on the Dean schedule?

A. Yes, sir.

Q. And that, you say, is a standard work written by a man named Dean?

A. Yes, sir.

Q. And relates to Fire Insurance rates?

A. Yes, sir.

Q. Very well. And I believe you said a little while ago that if these reports which you make annually to the State of Missouri were to furnish the basis of rate making that they should contain certain elements which you named; that is right, isn't it?

A. Yes.

[fol. 1523] Q. But that as they are made, as they are, they don't contain those elements, is that right?

A. Well, the elements I have referred to is that they do not properly express what is an adequate rate for Missouri.

The Referee: Will you read that answer, Mr. Blume?

(Answer read by the reporter.)

A. (Continuing:) I mean by that that the companies, and my company particularly, have had an unprofitable record in the State of Missouri.

Mr. Jacobs:

Q. But your report would not adequately state a rate, your report, does it? You don't mean that, do you?

A. I thought you referred to the Dean schedule.

Q. Oh, no. I am talking about these reports you make to the State of Missouri. My last question to you was, I believe, that, as they are wrong, according to your understanding they do not contain the elements that you say should be present in the way of rate-making—as furnishing the basis of rate-making.

A. If the Missouri State report is like all the other state reports that I can recall, it does not contain Missouri's specific information sufficient to make rates upon.

Q. And what is your understanding of the purpose of those reports which you make to the state each year?

(Witness laughs.)

Q. Just be frank with us.

A. I assume originally all these reports started for the purpose of giving the people of Missouri a correct idea of the financial standing of the various insurance companies. [fol. 1524] Q. Now, I think I have a complete understanding of your position on that matter of the reports.

Now, Mr. West, you said a moment ago that your company had an unfortunate experience in Missouri. What do you mean by that?

A. I mean by that that we have lost money during the period we have been doing business there.

Q. On what did you base your conclusion?

A. Well, that is——

Q. (Interrupting.) What method of figuring?

A. Now, that is quite a favorable method for Missouri. We simply base in our home office each state—our net premiums of that state, after deducting returned premiums and reinsurance which we have effected—we charge against it commissions paid and losses paid—rather, the losses incurred; losses incurred and all the specific charges which I referred to a moment ago that we could allocate to that state, but no general overhead.

Q. At all?

A. At all; yes, sir; and it shows that we have lost money.

Q. You include in that overhead which you speak of in your annual report to Missouri, don't you? You include that?

A. Yes, it is all put in in block, even though specific charges are included in the overhead.

Q. Do I understand you base your calculations on the premiums received, minus what you might have returned by way of cancellation?

A. And reinsurance effected.

Q. Which, of course, would reduce your premiums to that extent?

A. Yes, sir.

[fol. 1525] Q. Do you think that is the correct way of figuring it?

A. Yes, I think so.

Q. Do you think that is right?

A. In order to find out our own experience, that is the only way you can do.

Q. Now, with reference to incurred losses, you say that you use them?

A. Yes, sir.

Q. What do you mean by incurred losses?

A. I mean the losses which we may have incurred during the year for which we are providing the figures.

Q. How do you arrive at what your incurred losses are?

A. Well, as a matter of convenience we just debit or credit an increase or decrease in the unpaid losses over what they were the year before.

Q. That is, you want to find what the incurred losses of a specific year are——

A. (Interrupting.) Yes, sir.

Q. —you subtract the outstanding losses at the beginning of the year and add the outstanding losses at the end of the year?

A. No, we subtract—or add the difference between the outstanding the year before and the outstanding of the current year to the losses paid.

Q. That is what I say, isn't it?

A. Well, I didn't understand it that way.

Q. When you want to find out the incurred losses for a year you subtract the outstanding losses of the preceding year as they stood at the beginning of the year in question?

A. Yes.

Q. And you add the outstanding losses as they stand at the end of the year?

A. Yes.

[fol. 1526] Q. And that gives you your incurred losses?

A. Yes.

Q. Now, on an ascending scale of business, Mr. West, that would mean that you would subtract at the beginning of the year a smaller sum than you would add at the end of the year, wouldn't it?

A. It might, yes; the tendency would be that way.

Q. Yes. It is a pretty general rule, isn't it, that with increasing business there comes increasing losses?

A. Yes.

Q. What do you do about your expenses?

A. We allocate the expenses as actually paid.

Q. Why don't you use incurred expenses?

A. Impossibility.

Q. That is impossible?

A. Bookkeeping impossibility.

Q. Now, your incurred losses mean that during the year under inquiry you receive estimates from your agents as to losses, which enter your books?

A. Yes, sir.

Q. Now, those losses as they are turned in stand there subject to any change which conditions later might develop?

A. Yes, sir.

Q. Namely, they might be too great an estimate, is that true?

A. Yes, sir.

Q. Or they might be the subject of litigation?

A. The average shrinkage of it would cover it. The average shrinkage with us is about 12 per cent over the estimate.

Q. All right. Your average shrinkage of your paid losses over your estimated losses is about 12 per cent?

A. Yes, sir.

[fol. 1527] Q. Now, Mr. West, you say that you have got a sum of money or something representing it which you keep, you receive in the nature of premiums and keep, minus returned premiums due to cancellations and reinsurance, that's right, isn't it?

A. Yes, sir.

Q. What do you call that fund?

A. Well, that is our net premium; net retained premium.

Q. And what do you do with that?

A. Well, we keep that on hand to pay losses with and expenses. If there is anything left after doing that we invest it.

Q. Now, what is premium reserve?

A. The unearned premium reserve is the liability that the company must set up—by the laws, I think, of all the states—to represent the unearned portion of the premium which the policyholders have paid the company.

Q. Now, do you keep a separate unearned premium reserve to correspond to that liability which you charge in your books?

A. Yes, sir, we keep the reserve required by the various states.

Q. You mean particularly by New York, don't you?

A. No, all states have the same table, exactly.

Q. At any rate, do you keep it as a separate fund?

A. No, sir.

Q. You mingle it with your other funds?

A. Yes, no distinction whatever.

Q. You mingle it with your surplus?

A. Yes, sir.

Q. And all your assets?

A. Entirely so; no separation.

[fol. 1528] Q. Do you keep that fund, then, to pay losses out of?

A. Yes; insofar as it may be represented by cash in the bank we do.

Q. And you keep it to pay cancellations out of?

A. Yes.

Q. Which is subject to the payment of losses first, your surplus or your unearned premium reserve?

A. No distinction whatever.

Q. None whatever?

A. No.

Q. Now, you invest this money?

A. Yes, sir.

Q. And of course it comes from premiums received from Missouri and other states in the union?

A. Yes, sir.

Q. Then when you make these investments do you have earnings and losses due to your investments?

A. Yes, indeed.

Q. Which over-balance from '17 to '21, inclusive, your earnings or your losses?

A. From investments?

Q. Yes.

A. I would think—I couldn't say definitely, but I would make a guess that the losses exceeded the gains.

Q. Exceeded the gains?

A. Yes. I am speaking now of valuations. Is that what you refer to?

Q. You mean book valuations as they have changed from time to time?

A. Yes, sir.

Q. Due to the fluctuations of the market?

A. Yes, sir.

Q. Now, do you call that—I mean that book valuation that fluctuates with a market loss or a gain?

A. We do.

[fol. 1529] Q. And you call it the same kind of a loss or gain which happens when you actually sell the security at a profit or loss?

A. So far as our statement shows, yes, sir.

Q. Speaking strictly upon the sale of securities, do you believe that during that five year period your losses have exceeded your gain?

A. Very much so. That is strictly on sales.

Q. You think your losses exceeded your gains?

A. Yes.

Q. And you believe that on your book valuations the same thing transpired?

A. I think so, yes.

Q. So that during that five years, both in the sale of securities and from book fluctuations, you had a loss on your investments instead of gains?

A. I would say yes.

Q. Are you on the finance board?

A. Yes, sir.

Q. In what way do you invest your moneys?

A. Oh, almost everything.

Q. Stocks?

A. Stocks, bonds and mortgages.

Q. Any railroad securities?

A. A few; very few.

Q. Any industrials?

A. Quite a few, yes, sir.

Q. Those industrials which are quoted upon the Stock Exchange and other places?

A. I would say only a small part of them on the Stock Exchange.

Q. Those investments which you have largely invested in have no market value, I mean from the standpoint—market value from the standpoint of being quoted on the Stock Exchange?

A. Well, we haven't largely invested in those. We have [fol. 1530] quite considerable in that class, but it is not a large investment by any means.

The Referee: Those are relative terms. What do you consider a large investment?

A. We have now about 11 million dollars in assets, and I would doubt if we have 5 per cent of our assets in industrial securities that are not traded in regularly and steadily and you could tell always about what the market value was.

Mr. Jacobs:

Q. Did you bring with you the records of your company with reference to its earnings or losses for the five year period or for recent years?

A. I did not, no sir. I didn't know that I was to appear here. I was in the city when I heard of it.

Q. Now, did you pay any dividends in 1921?

A. Yes, sir.

Q. How much dividends did you pay?

A. $240,000.

Q. By the way, what was your original capitalization of your company?

A. $100,000, in 1864, I think it was.

Q. What is your capitalization now?

A. 1 million dollars.

Q. Now, how much of that capitalization is represented, that incorporation, is represented by cash payments on the part of stockholders?

A. Of our entire capital, $700,000 was paid in by the stockholders.

Q. And how was the other $300,000 acquired?

A. That was a stock dividend declared in 1912.

Q. $300,000 in 1912?

A. $300,000 in 1912.

[fol. 1531] Q. Now, your capitalization remained the same since 1912, namely 1 million dollars?

A. No. In 1919 we sold $500,000 more of stock. It was 200 originally, before 1912. Then 150 per cent stock dividend was declared, making it $500,000.

Q. You say that was $150,000 in 1912?

A. Yes—$300,000 in 1912.

Q. That makes $500,000?

A. Yes, sir. And then in 1919 we sold $500,000 additional stock.

Q. That made 1 million dollars?

A. Yes; sold it at par to our stockholders.

Q. By the way, what is it worth today?

A. Oh, about $50 a share; about $52, maybe; ten dollar shares.

Q. About 5 for 1 today?

A. Yes.

Q. And that has transpired since you sold it in 1919, or four years ago?

A. You mean this value?

Q. You sold this $500,000 worth of stock in 1919 at par, or $10 a share?

A. Yes, to our stockholders.

Q. And today, in 1923, it is worth about $50 to $52?

A. Yes.

Q. Now, your surplus, what was your surplus in 1864?

A. Oh, I couldn't tell you.

Q. What is your surplus today?

A. Our surplus today is—I could only tell you as of January 1st.

Q. Of 1923?

A. Yes, sir.

Q. Well, that's all right.

A. $2,953,000.

Q. Now, what was it in January, 1922?

A. $2,825,000.

Q. What was it in January, 1921?

A. $2,725,000.

[fol. 1532] Q. And what was it in January, 1920?

A. $2,701,000.

Q. And January, 1919?

A. $2,576,000.

Q. $2,576,000?

A. Yes, sir.

Q. Now, in 1918 what was it?

A. $2,496,000.

Q. And in January, 1917?

A. $2,371,000.

Q. Now, then, there was a progressive increase in your surplus from 1917 up to January, 1923, wasn't there?

Mr. Folonie: Except for one year.

Mr. Jacobs: Except for one year.

Mr. Folonie: One year it went down.
Mr. Jacobs: No year.
The Witness: Yes, that is right, yes.

Mr. Jacobs:

Q. There was an increase every year, wasn't there?
A. Yes, sir.
Q. $2,371,000 in 1917; and on back up to $2,953,000 in January, 1923?
A. Yes.
Q. Now, what dividends, if any, did you pay in 1917?
A. $185,000.
Q. Tell me the percentage of that upon your capital stock?
A. That is on $500,000.
Q. As things stood, of course, in 1917.

Mr. Leahy: What was the surplus that same year?
Mr. Jacobs: $2,371,000.
The Witness: That is 37 per cent.

Mr. Jacobs:

Q. What did you pay in 1918?
A. We paid the same—wait a minute—we paid the same, $185,000 on $500,000. That is 37 per cent.
[fol. 1533] Q. What did you do in 1919?
A. We paid 18½ per cent. Our capital was increased to $1,000,000 and we didn't pay any more money out in dividends.
Q. In 1920?
A. We paid $240,000; that is 24 per cent.
Q. 24 per cent on a million?
A. On a million, yes, sir.
Q. What did you pay in 1921?
A. The same; 24 per cent.
Q. Now, Mr. West, the history of your company for those five years was that you progressively increased your surplus ever year from 1917 to 1923—January, 1923—according to the figures you read a while ago. Is that right?
A. Yes, sir.
Q. And you paid a dividend ranging from 18½ per cent to 37 per cent each year of those five years; that's right, isn't it?

A. Yes, sir.

Q. And your stock, which you sold in 1919 for par or $10 a share, is today worth $50 to $52, that's right, isn't it?

A. No, no, that is not right.

Q. Well, maybe I misunderstood you. You sold $500,000 worth of additional capital stock to your stockholders in 1919 for $10 per share, didn't you?

A. Yes, sir.

Q. And your stock today is worth $50 to $52, isn't it?

A. Yes, but the stock that was ahead of this stock, issued previous to that, was worth $60 a share.

Q. I say it is all worth today $50 to $52?

A. Now, if you put the "all" in, you have got it right, yes, sir.

[fol. 1534] Q. And there was a decrease of from $60 to $50, but there was increase of 50 per cent—or 100 per cent, I mean, or $500,000 to 1 million dollars, in your capitalization?

A. Yes.

Q. Now, did you pay any stock dividends during those five years?

A. No, sir.

Q. Now, you made money during those five years, didn't you?

A. No, sir.

Q. Well, you paid a lot of dividends and accumulated additional surplus every year, didn't you?

A. Well, perhaps I am mistaken in that assumption, but I assume when you say we made money that you are referring to our insurance business.

Q. I am referring to the business of the Glen Falls Company.

A. Yes. Our insurance business during that period showed a very material underwriting loss.

Q. I will ask you about that in a moment. You said a little while ago that your investments showed a loss for that period.

A. Market values, yes, sir.

Q. And you also said on the sale of stocks and securities.

A. Yes, sir.

Q. Now, although your investments showed a loss both ways you figured, you still increased your surplus and paid

these dividends ranging from 18 to 37 per cent a year, didn't you?

A. We had interest earnings of about, on the average for that period, of $500,000 a year on the invested assets. That item alone made up the losses either from changes of market values in our statements or from actual sales of securi-
[fol. 1535] ties, and made up the underwriting loss and paid the dividends and left us besides whatever gain there was in surplus during the five years.

Q. In other words, Mr. West, it is almost invariably the rule that the interest earnings which you receive take care of the investment losses you may suffer, don't they?

A. I think that is true of the Glen Falls, yes, sir.

Q. And it is a fact that your investment experience usually operates at a loss,-doesn't it?

A. I would say that over a long period of normal sort of years, excluding the abnormal, like the war period, that our losses or gains either from sales of securities or from changes in market values, would just about offset each other.

Q. So that your gain comes from your interest earnings?

A. Yes, sir.

Q. Now, you receive interest earnings in part from your unearned premium reserve, don't you?

A. Well, we don't know that. We received interest earnings from our invested assets.

Q. You don't know that, but you know that your unearned premium is in your general funds of your company?

A. Yes, unearned premium is represented by our general assets.

Q. And it is in there somewhere, isn't it?

A. Yes, sir.

Q. You don't separate it by putting one fund over here and another one over there?

A. No. It is impossible to do that.

[fol. 1536] Q. Now, you say, Mr. West, that if you were making a report for the purpose of fixing rates that you would include the direct expenses of the state as one thing—that is, the expenses that were directly attributable to that state?

A. Yes.

Q. Didn't you?

A. Yes.

Q. And also in addition to that allocate to the state its proportionate share of your other general expenses?

A. Yes.

Q. That means your expense of investment operations?

A. That is no expense at all. No need of talking about it.

Q. Well, I don't know about that. You pay rent for your headquarters, don't you?

A. No, we own our own building.

Q. Who owns the building?

A. Glen Falls Insurance Company.

Q. And are you the sole tenant of it?

A. No.

Q. Do you charge any rent against your company for the use of that building?

A. Yes, we are required to do that by your state department of insurance. We allocate the highest rent that we obtain in the building, and the premises that we occupy, on a per foot basis.

Q. Yes. Now, you rent other parts of the building?

A. Yes; five story building and three and a half stories are rented.

Q. So you do pay rent to the extent that there is a charge made for rent for those quarters occupied?

A. Yes.

[fol. 1537] Q. By the head office of your company.

A. Yes.

Q. You have your clerical help and your stenographers, don't you?

A. Yes, sir.

Q. You have your stationery and your stamps?

A. Yes, sir.

Q. You have your salaries of officers?

A. Yes, sir.

Q. You have all your other expenses that attend the transaction of the business at the Home office?

A. Yes, sir.

Q. Now, along with your underwriting business you conduct your investment operations from this place, don't you?

A. Yes, from Glen Falls.

Q. And from this office, or these offices?

A. Yes, sir.

Q. All of your business is conducted out of there?

A. Yes, sir.

Q. You have national expenses that you have been describing, or Home office expenses which you say should be allocated to the various states in furnishing the basis of a rate?

A. Yes, sir.

Q. Now, how do you regard and for what purpose do you regard the unearned premium reserve?

A. Why, it is primarily in the law of this state, and I presume of most other states, of the unearned portion of the premium which you are supposed to hold subject to demand on the part of the policyholder in case he desires to cancel his policy.

[fol. 1538] Q. You regard it in the nature of a trust fund held to that extent?

A. No.

Mr. Leahy (interrupting): That is a legal conclusion.

The Referee: He says he does not, so I suppose it is harmless.

Mr. Jacobs:

Q. Who do you think that money belongs to?

Mr. Leahy: That is also asking for a legal conclusion.

Mr. Jacobs: Well, in the treatment of it?

The Referee: He may answer.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I think it belongs to the Glen Falls Insurance Company. There is no segregation of any particular part of its assets for the unearned premium reserve.

Q. Well, of course, that is your—that is what you do with it, isn't it? The fact that there is no segregation, you are entirely responsible for that, aren't you?

A. No. The law does not require any segregation, as I understand it.

Q. You handle it, however, and you mingle it with the funds of the company, don't you?

A. Yes, sir.

Q. Do you pay losses out of your premium reserve?

A. (Laughing.) Why, we pay losses out of our bank

account, which is part of our general assets, just the same as any other liability—or surplus.

[fol. 1539] Q. Well, as an incident, then, of the possession of this money in the general funds, you pay losses out of it?

A. Yes, sir; or whatever you might say was the proportion of our general assets that the reserve bore.

Q. Do you pay expenses out of it?

A. Yes, sir. Use it just like any of our assets. There is no distinction.

The Referee: As I understand you, Mr. West, all receipts go into one pot?

A. Yes, sir.

The Referee: And all expenses are paid out of that pot?

A. Yes, sir.

Mr. Jacobs:

Q. Now, then, whatever losses you may have had from any source during this five year period under inquiry were absorbed so that there was left profit sufficient to pay these various dividends and also to make these increases in the surplus?

A. Yes, sir. You said "various sources,"—profit from various sources.

Q. Yes.

A. Income from all sources enabled us to do that, yes, sir.

Q. Now, these moneys with which you make your investments and upon which you have your interest earning are moneys received—with the exception of your stock sales from premiums, aren't they?

A. Yes.

Q. And you believe that the charges of operating a central office in all its respects should be charged against the various states for the purpose of rate-making?

A. Yes, sir; can't be otherwise.

[fol. 1540] Q. Do you feel that there should be any consideration of the earnings upon those moneys, in making rates?

A. Why, I have always felt that the only possible interest that might be regarded as sufficiently worthy of allocating to a state would be that proportion of our capital

—and when I speak of capital I mean the money employed in our business, which represents solely the capital and not surplus. Now, then, I think possibly you might say there is the part that you could allocate to a state in proportion to the amount of business you did in that state, to all of our business.

Q. In the fixing of rates?

A. In the fixing of rates, yes, sir. That is what you want to earn money on, in the way of carrying on insurance.

The Referee: Pardon me right there, Mr. Jacobs, please. I take it from what you have just said, Mr. West, that you look upon the capital for which capital stock is issued and your surplus as constituting in a sense your working capital?

A. Yes, sir. It is, without question. I have even tried to get our board of directors to declare their dividends on not only the capital stock surplus and pay us the per cent on the two combined. It has a fictitious effect now upon the public when we declare, for instance, a 24 per cent per annum dividend on a million dollars when in effect it is 24 per cent on practically 4 million dollars of working capital.

Mr. Leahy: 5 per cent.

A. 6 per cent on 4 million dollars. That is what it is, yes. But our board are from 83 years old down and it is rather difficult to change their old habits.

[fol. 1541] Mr. Jacobs:

Q. Do you include in the consideration of—do you include in your thought that there should be a consideration upon the capital—I mean a consideration of the earnings upon capital and not surplus, the earnings upon that indivisible part of your general assets, the unearned premium reserve, in arriving at a rate?

A. No.

Q. You limit it to net surplus and to capital?

A. I claim that if we are doing 2 per cent of our entire business in Missouri that we should take 2 per cent of our working capital, consisting of capital and surplus, and figure out what would be a proper return to include in the rate charged.

Q. And you don't include the earnings upon unearned premium reserve in that theory of yours?

A. No sir. That is ours.

Q. You figure that is yours?

A. That is ours absolutely; belongs to the investment account and hasn't anything to do with the——

Q. (Interrupting.) The fact of the matter is, your idea is that dividends should be declared so that instead of saying 24 per cent upon a million dollars that it ought to be declared as 6 per cent upon your total capital and surplus?

A. Yes, sir.

Q. Although your stockholders, of course, may only invest, speaking from their standpoint, in the most advantageous way, 1 million dollars?

A. Oh, no. They have invested much more.

Q. Well, let's see whether they have or not.

A. Well, go and ask that man that bought some stock [fol. 1542] yesterday for $52 a share and ask him what he has invested in the company.

Q. Your stockholders—of course, if they buy at the top of the market——

A. (Interrupting.) Our stockholders have all changed in the last ten years; practically so. I dare say—why, we had 130 stockholders 10 years ago and today we have got 700.

Q. Your idea is because some of your stockholders bought your stock when it increased in value on account of the earnings of the company that their dividends should be declared upon the entire amount of the capital stock and the surplus as well—would that change the amount of money they would actually get?

A. No, it wouldn't change the amount of money you could safely declare in dividends.

Q. One way or the other, it wouldn't change?

A. No.

Q. It would just look better to the public?

A. No, when it arrived down in Missouri instead of being incensed that the Glen Falls paid 24 per cent dividends, they only paid 6. And when you are talking 6 per cent down there you are not interested in us. That is the reason, and it is a true situation.

Q. It is not figured that way anywhere else, though, is it?

A. No.

Q. You figure dividend percentages on capital stock everywhere, don't you?

A. Certainly.

Q. Your idea is that by using your method of figuring that it would lessen any complaint that might be made down in Missouri or somewhere else down in that country [fol. 1543] where they said 24 or 37 per cent was too much?

A. No. My idea is it is a correct statement of fact. Now, for 70 years the management of the Glen Falls has labored openly and earnestly and slowly to build up an institution there that had some standing in the community at large. To do that they had to forego profits that they might have declared to the stockholders, and they practically said to the stockholders, "See here, let us use it as your money here," and it made a gradual accretion from year to year of the value of the stock. Now, I claim that it is just the same as though those men had paid that money in.

Q. Now, you are speaking from the standpoint of the stockholders when you make this statement?

A. Yes, sir.

The Referee: We will take a recess here now.

(Whereupon a ten minute recess was taken.)

Mr. Jacobs:

Q. Did I understand you to say, Mr. West, that your notion of the way to figure—furnish the basis for rate-making, was upon premiums received, losses incurred and expenses paid?

A. Well, I am inclined to think that I may have said that hastily. What I meant, of course, was premiums earned. There is nothing in this "premiums received." We, in insurance parlance, always talk of premiums earned because on premiums received it doesn't mean anything at all.

Q. What do you mean by the words "Premiums received?"

A. We might take in this month $100,000 in premiums and we would have no losses on it at all; but, if we carry [fol. 1544] that out to expiration we might have a 90 per cent loss ratio on it. After it has expired it is earned.

Q. You might have a loss ratio of 100 per cent on earned premiums?

A. Yes.

Q. So that doesn't really mean anything, does it?

A. Yes. That is the only correct way to figure loss ratio—on earned premiums.

Q. You first said premiums received, and now you say premiums earned.

A. I misspoke, because the question was not direct enough to indicate to me that you were doing anything more than getting a cursory understanding of our premiums in Missouri. Now, if you are talking about a basis of rates or loss ratios, it should be on an earned basis.

Q. How do you arrive at premiums earned? How do you get them for a fixed period?

A. Well, the shorthand way would be to take and charge against your losses and expenses for the year any increase in your unearned premium reserve. Likewise, if there was a decree you would give credit to the losses and expenses item of that much.

Q. How do you arrive at the figure of what your earned premiums for a fixed year are?

A. We take our actual unearned premium reserve here as we have figured it. We might have a trading profit, if you please, what would be the balance between net premiums received and losses and expenses paid, that we call a trading profit. We might have a profit, if you please, of $500,-[fol. 1545] 000 in one year and yet our unearned premium reserve had increased $600,000—that would show that our underwriting results for the year were $100,000.

Q. I asked you how you arrived at the figure of what your earned premiums were.

A. We arrive at the earned premiums by taking the increase or decrease of our unearned premium reserve for the year.

Q. You mean by adding at the beginning or subtracting at the end, or vice versa?

A. Yes, sir.

Q. In the fashion you arrive at your incurred losses?

A. Yes, somewhat.

Q. Except you reserve the process?

A. Yes.

Q. And you add your outstanding premiums, or premiums unearned at the beginning and subtract them at the end of the year?

A. We start with a certain fixed unearned premium at the beginning of the year.

Q. What do you do with the unearned premium? You substract it, don't you?

A. No. We are trying to find out the results for a given year on an earned premium basis. Now, then, we take and figure out what you—we start with a fixed sum at the beginning of the year. Now, at the end of that year we might have a decrease in our unearned premium fund of $100,000.

Q. Or an increase, you might have?

A. Yes. We credit that against the trading profit and that shows us a shorthand way of finding out what your underwriting loss or gain was.

Q. Do you I understand you, then, that in order to arrive at your earned premiums for a fixed year, you add at the beginning of that year your outstanding or unearned premiums?

A. We start with it.

[fol. 1546] Q. Yes. You add them when you are figuring at the end of the year—the figure that you started with at the beginning of the year?

A. Yes.

Q. And then you subtract at the end of the year your outstanding unearned premiums?

A. Yes.

Q. And that figure gives you your earned premium, you say?

A. Yes.

Q. Now, on an ascending scale of business you subtract the smaller figure—you add the smaller figure and you subtract the greater figure, don't you—on an ascending scale of business?

A. Yes.

Q. It operates just the opposite from the method by which you get your incurred losses—on an ascending scale of business?

A. No, just exactly like your incurred losses. It is the same way, exactly.

Q. In arriving at your incurred losses you subtract at the beginning and you add at the end, don't you?

A. No, we take, for instance, our losses paid during the year, and then we take the difference between the losses

outstanding at the beginning of the year and the amount at the end of the year and we either add or subtract that from the losses paid. That gives the losses incurred.

Q. Don't you add the losses at the beginning, or do you subtract the losses at the beginning?

A. Well, it is either way that works out.

The Referee: Mr. West, if you take the outstanding unpaid losses at the beginning of the year and add to them the losses paid during the year and then take the difference between that sum and the outstanding unpaid losses at the [fol. 1547] end of the year, does that get the same or a different result?

A. That is the same, exactly; exactly the same.

Mr. Jacobs:

Q. I don't know whether I understandstand that or not. Is this a method that is used and will this reach the same result which your method provides: That in arriving at incurred losses you subtract the outstanding losses at the beginning, which were in existence at the beginning of the year, and at the end of that year, for which you are making inquiry, you add the outstanding losses—is that wrong?

A. That is wrong. You haven't anything to subtract it from.

Q. You have your business at the end of the whole year, haven't you? I am talking about an inquiry for definite year, 1919, we will say.

A. Yes.

Q. In January, 1919, you have got a certain outstanding incurred loss?

A. Unsettled losses; yes.

Q. Then you do a year's business?

A. Yes.

Q. And on December 31st of 1919 you want to find out what your incurred losses are?

A. Yes.

Q. Now, do you subtract or do you add the outstanding losses at the end of the year?

A. You add the outstanding losses to the losses paid during the year and then you subtract the outstanding losses at the close of the year, and that gives you the losses incurred.

Q. Now, that is the correct way to do?

A. Well, that is an approximate way. It is so near that it is hardly worth while going through the long minutiæ of actually figuring out in detail.

[fol. 1548] Q. Would this be a correct way to arrive at incurred losses: At the end of 1919, as an illustration, you desire to get your incurred losses for the year. You subtract from your year's business the outstanding losses of the first of the year and those outstanding losses of the end of the year?

A. No.

Q. That is not correct?

A. No. The correct way is just as I read.

Q. You say the method I have suggested is not correct?

A. No, you are not using "adding" and "subtracting" in the same sense that I do.

Q. Well, give us the reason, please, that the method that I have suggested to you is not correct.

A. Well, it is not—I would not say it is not correct, but it is not my formula, because you can't work it out on that basis.

Q. Well, then, it is not correct, is it, if it won't or can't be worked out?

A. No.

Q. And any results that were given——

A. (Interrupting.) As I say, you are going to start and subtract something but you haven't anything to subtract it from.

Q. Well, you didn't listen to what I asked you?

A. All right; I will try again.

Q. I told you we would take the situation as it stood on December 31, 1919.

A. Yes, sir.

Q. Figuring an incurred loss for that year; that you had premiums of 1919, from which were subtracted the outstanding losses as they stood on January 1, 1919, and added the outstanding losses as they stood on December 31, 1919. Now, is that or is it not a correct method and will it or will it not bring a true result or calculation?

A. That is too deep for me.

[fol. 1549] Q. Did you ever hear of that method?

A. No.

Q. Never did?

A. No.

Q. You don't think it would work out, do you?

A. The only method that I can think of is the one I have related. You start on January 1, 1919, with, say 1 million dollars of outstanding losses, and you have paid at the end of the year another million dollars in losses, which you add to that sum, and you find at the end of the year you have outstanding $900,000 in losses, so that you have had incurred during the year $1,100,000 in losses.

The Referee: Mr. West, I think if you think a moment it will either clear the confusion in my mind or in your own, because as far as I am able to see, the result obtained is exactly the same whether you adopt your method or his.

A. Well, if it is, all right; only I just didn't——

Mr. Jacobs (interrupting): Well, let's let the witness say whether or not he thinks that is a practical method and whether or not it will reach a result.

Mr. Leahy: Identical.

The Witness: If it is identical, all right.

Mr. Jacobs:

Q. I don't ask you if it is identical, but will it reach a correct result?

A. Well, I am awfully sorry because I don't follow your proposition, because you start off with trying to subtract something from nothing.

The Referee: No, he doesn't

The Witness: All right. You state it.

The Referee: The question is—and I think I state Mr. Jacob's question—consider the point of time at which the calculation is made as of December 31, 1919.

A. Yes.

[fol. 1550] The Referee: Now, then, at that time you know the amount of paid losses you have paid during that year?

A. Yes.

The Referee: From that sum deduct the outstanding losses at the beginning of the year 1919?

A. Yes.

The Referee: Then add to that remainder the outstanding losses as of December 31, 1919.

A. Absolutely my proposition, only I start at the other end of the year.

The Referee: Just what I thought.

Mr. Jacobs:

Q. Well, then, this method is a correct one. Now, do losses increase on an ascending scale of business, as a general proposition?

A. With an increase in business, you mean?

Q. That is what I said.

A. Yes, indeed; yes.

Q. Well, then, you subtract the small amount of losses at the beginning and add a big amount of losses at the end on an ascending scale of business, according to your calculation, don't you?

A. Yes.

Q. Now, on premiums you suggested a method of arriving at the earned premiums. You reverse the process and add the outstanding premiums at the beginning of the year and subtract them at the end, don't you?

A. Subtract or add at the end, whatever way it may be; increase or decrease.

Q. Well, whether it is increase or decrease or not, you add—you add the outstanding unearned premiums at the end of the year, whatever the result of your business may have been, don't you?

A. Yes.

[fol. 1551] Q. Well, on an increased business, of course, your premiums increase, don't they?

A. Yes, indeed.

Q. So on an ascending scale of business you deduct at the end the greater amount or volume of premiums and add the smaller amount at the beginning?

A. Yes.

Q. Now, that is the process. Well, now, you say that should furnish the basis of calculations for rates?

A. Yes, sir.

Q. Now, let us be clear whether you still stand on your original statement with reference to expenses. You say now that expenses are expenses paid. That is the only way you can figure it, isn't it?

A. That is the only way we can figure it—expenses paid.

Q. Yes. Now, you figure as a matter of fact that out of premiums received in the first year about 85 per cent or thereabouts is unearned premiums, isn't it? And the balance is earned premium?

A. The first year of a company starting, you mean?

Q. Well, no, on the first year of the writing.

A. On the first year of the writing, you mean?

Q. Yes.

A. Well, I wouldn't think it would run quite as heavy a proportion as that, but it runs very heavy.

Q. Is that about right?

A. I can readily tell you what one company has done right here.

Q. Well, I am talking about an average of business among insurance companies, whether that is an average of business?

A. Well, a new company wouldn't have 85 per cent reserve.

Q. Well, I am talking about new writings.

Mr. Leahy: How old is the company?

[fol. 1552] Mr. Jacobs: I don't care about that.

The Witness: You mean current business; current year's business. You would say you take about 85 per cent for unearned premium. I think that is about right, and perhaps it might exceed that, with an old established company.

Q. Now, on each year's calculations do you charge all the expenses?

A. Yes, yes.

Q. And all losses?

A. Yes.

Q. Why is it, Mr. West, that the fire companies invest so much more heavily in stocks and bonds than life companies, do you know?

A. No.

Mr. Leahy: That is an assumption that has not been proven in the evidence here.

The Witness: I don't even know it, and haven't any idea why such a situation should exist.

Mr. Jacobs:

Q. You don't know why it should exist?

A. No, I don't know that such a situation is true.

Q. Now, I am taking it that you have a very wide general knowledge of the insurance business, and first I am going to ask you if it isn't a fact that with your own company running from 1906 to 1919 there was not a considerable increase in the percentage of your investments in stocks and bonds?

A. From 1906 to 1919?

Q. Yes.

A. You mean as compared with what? Considerable increase—naturally would be increase.

Q. I mean percentage increase.

A. Increase in assets. You see, in 1906—I don't know what we did then, but we must have had about 3 or 4 mil- [fol. 1553] lion dollars, and in 1919 we had 9 million.

Q. Proportionately speaking, wasn't there a great percentage increase in your investments in stock?

A. No, I don't think so.

Q. Let me ask you if your percentage investment in stock in 1906 wasn't 11-79/100?

A. I couldn't tell you.

Q. And in 1919 20.38/100?

A. I couldn't tell you that.

Q. Making an increase of 8.59?

A. I don't know; never looked that up.

Q. Then you can't answer that?

A. No.

Q. By the way, Mr. West, did you lose every year of the five year period under inquiry on your investments?

A. I couldn't say that. I would hardly think not.

Q. What do you mean by that?

A. I think there is one or two years where we didn't lose on our investments. That is, on losing on our investments, I mean fluctuation of market values at the time we made our statement.

Q. The fact of the matter is that in 1919, when the Globe-Rutgers and the Great American and the Hanover and the Home and the Niagara and the United States and the Westchester all lost money on their investments, and also the

Hartford and St. Paul Fire & Marine, your company made 3.97/100 per cent, didn't it?

A. I haven't the figures.

Mr. Hogsett: Do you object to telling what you mean?

[fol. 1554] Mr. Jacobs: I mean just what I say, that on his investments of that year, 1919, that company, contrary to the experience of all these other companies on investments, who lost money, made the percentage I suggested.

Mr. Hogsett: I am asking whether you mean by that fall in the market or loss realized by sales, whether you are including interest on earnings or what.

Mr. Jacobs: I am not talking about interest on earnings. I am talking about investment earnings.

Mr. Hogsett: You didn't mean that, but yet your question might be susceptible to that construction.

Mr. Jacobs: Oh, no. I said upon investments.

Mr. Hogsett: Make your question clear.

Mr. Jacobs: I did. I said "upon investments."

The Referee: Read the question as written, Mr. Blume, please.

(Question read by the reporter, as follows:)

"Q. The fact of the matter is that in 1919, when the Globe Rutgers and the Great American and the Hanover and the Home and the Niagara and the United States and the Westchester all lost money on their investments, and also the Hartford and St. Paul Fire & Marine, your company made 3.97/100 per cent, didn't it?"

Mr. Leahy: Now, that question is objectionable on another ground, it presupposes another.

The Referee: If the witness knows, he may say. If he does not, he may say that. I assume he can say whether or not his company made or lost money in the proportion stated, or if he doesn't know he can state that. Objection overruled.

[fol. 1555] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't know the basis at all on which you are——

Mr. Jacobs:

Q. (Interrupting.) On stocks and bonds.

A. I don't know whether that means profits on sales or whether it includes our interest earnings, to arrive at that figure, or just change in market values.

Q. Investments in stocks and bonds would not comprehend interest earnings, would it?

Mr. Hogsett: Why not?

Mr. Jacobs: Because you get interest earnings as a separate fund from your investments in stocks and bonds, don't you?

The Witness: Yes.

Mr. Jacobs:

Q. And that is where you got the earnings that offset all other losses?

A. Yes, we call that "investment income."

Mr. Jacobs: I think the witness understands the situation. I don't think any such situation as you speak of exists, Mr. Hogsett.

Q. I will ask you whether or not your investment in stocks and bonds, on your investment in stocks and bonds in 1919, you didn't make 3 97/100 per cent?

A. I wouldn't say definitely, but if I was going to speak by my judgment I would say no, we did not; that there is some mistake there somewhere.

Q. Didn't your company offer the testimony of its books before the joint legislative committee on housing, in the City of New York?

A. No.

[fol. 1556] Q. Nobody testified there for you at all?

A. No.

Q. Was there any investigation made of your books?

A. No, none has ever been made.

Q. Publication of your reports?

A. None that I know of.

Q. Didn't you make any?

A. No, we made no reports to them.

Q. No reports to anybody—to the commissioner of insurance of New York?

A. Not for that purpose, no.

Q. I understand it is available, isn't it?

A. Oh, always available, yes, sir.

Q. I understand, but it is available, isn't it?

A. Oh, always available, yes, sir. I wonder if I might throw a little light—a little thought on that subject?

Q. Go ahead.

A. I have been trying to run over in my mind how any such figures could be arrived at, and the only possible way I can figure it out is that we follow regularly the valuations as put out by the state Insurance Department and this committee of superintendents. We change our valuations on the books every year up or down as they have directed. Now, a number of those companies which you have named there during that period were not following the convention form of valuation at all, and they filed two reports. One was on the market values, which was considerably less than the convention values, and the other was on the convention values, because the state Insurance Department of New York would not accept any statement on any other basis. They filed two and that that went to the [fol. 1557] public was on market values. That would show a material loss, whereas ours, marked up on convention values, might have shown a material increase.

Mr. Leahy: In other words, you were not on the same basis?

A. No.

Mr. Jacobs:

Q. Where do these convention values come from?

A. That is a committee of the Superintendents of Insurance from around the United States.

Q. Where do they get the values?

A. They employ some experts to get up those values of all the securities owned by insurance companies, and they publish it in book form. That comes to the companies in the middle of January.

Q. Don't they get their values from the market, if there is a market?

A. Yes, sometimes, but during the war they put fictitious values, and in 1919 and 1920 there were some fictitious values on the securities.

Q. You mean higher than the market?

A. Yes, sir, materially higher than the market. For instance, during that time we had 2 million dollars in Government Bonds, which might not have been worth over 92, and yet the superintendents—or this convention value, requires us to pull all Government Bonds in at what we paid for them, which was par.

The Referee: In that connection, when you make your reports, taking the convention values, do those values so made coincide with your own judgment as to the actual value?

[fol. 1558] A. They are more nearly like that now, but during the war they were out of sight on actual values; way beyond them.

The Referee: But you, nevertheless, took the convention values?

A. Yes, sir, always. We either had to do that and make one kind of report or make two reports, and we decided to make one report and take convention values.

Mr. Jacobs:

Q. I assume all those others did.

A. The Great American and the Niagara, they absolutely, as far as the public was concerned, would not publish only the market values, which is materially less.

Q. Well, here is the Globe Rutgers?

A. They are the same way.

Q. And the Hanover?

A. I don't know about them.

Q. What other companies refused to accept the convention values?

A. I think the Fireman's of Newark, New Jersey, and Camden of New Jersey was one.

Q. Any others?

A. I don't recall any of those.

Q. None of those are named here as losing?

A. Yes.

Q. Now, I will read you an experience in investments of life companies in this state and fire companies in this state with reference to percentages of their investments in bonds and stocks and mortgages from 1906 to 1919, and ask oyu if you know whether these are facts, with the life companies of New York——

[fol. 1559] Mr. Leahy: That is objectionable. What difference does it make what you read—what the life companies invest in or whether they invest at all?

Mr. Hogsett: We are way afield from the situation in this case. The keystone of this law suit is the experience of the stock fire insurance companies in the State of Missouri between 1917 and 1921, inclusive, and now we have gotten so far away from that that we are discussing the question of the investments of life insurance companies. Now, we might go on ad infinitum, dealing with the method of handling business of banks, and from that we might go into the security business, and from that we might go into the packing-houses, and just everywhere. We are not anywhere within the issues in this lawsuit at this particular moment.

Mr. Folonie: It might be helpful to read the statute we are working under here.

The Referee: It is sometimes pertinent.

Mr. Folonie: Section 6283 says:

"If, upon such investigation, it appears that the rates charged in this state by the stock Fire Insurance Companies for the five years next preceding such investigation are producing a profit in excess of what is reasonable, he shall order such reduction of rates as will, in his opinion, produce a fair and reasonable profit only.

That part I read is the same in both statutes.

The Referee: Now, gentlemen, may I have your attention? The pertinent portion of the statute under which this investigation is being made I take it is this: (Reading from Section 6283 of the revised statutes of 1919 in Mis- [fol. 1560] souri)—that is, this is as it now appears in that volume:

"If, upon such investigation, it appears that the rates charged in this state by the stock Fire Insurance Companies

for the five years next preceding such investigation are producing a profit in excess of what is reasonable, he shall,"——

(a) Then the Superintendent of Insurance "shall order such reduction of rates as will in his opinion produce a fair and reasonable profit only."

Now, you gentlemen have stated your objection. What have you to say, Mr. Jacobs?

Mr. Jacobs: Well, we will of course get into the whole realm of discussion of whether or not we are allowed to go into other operations of the company beyond a strict underwriting operation, and of course there is that part of the statute which was not read, which provides for a consideration of certain things. That has nothing in it about question of considering only earned premiums. Now, the question is whether or not——

The Referee (interrupting): Will you point out the section you have in mind?

(Discussion ensues, which is not made a part of this record.)

The Referee: Suppose, Mr. Jacobs, you complete your question or re-frame it, we will have something definite before us.

[fol. 1561] Mr. Jacobs:

Q. I wanted to call your attention to percentages of investments from the years 1906 to 1919 in stocks and bonds and mortgage loans as between life companies and the Fire and Marine Companies——

Mr. Hogsett (interrupting): Now, to which we object, for the reason it hasn't any relevancy whatever to the issues.

Mr. Folonie: He hasn't asked his question yet.

Mr. Jacobs:

Q. (Continuing:) Now, let me ask you, Mr. West, if it is not a fact that covering this period of years there wasn't an increase, on an average, I mean, of an investment by the Life Companies of New York in mortgage loans of 23 to 26 per cent, and an average by Life Companies of other

states in investments in mortgage loans of 40.57 per cent, as against an average investment by Fire and Marine Companies in the state—in the country generally, in mortgage loans of 8.30 per cent, and in New York of 2.69 per cent.

Mr. Hogsett: We object to that question.

The Referee: That is your question now, Mr. Jacobs.

Mr. Jacobs: Yes. I was going into it in detail, but in order to shorten the matter I will merely ask him the question with reference to the average for this period of time.

The Referee: Without an opportunity for you to make an objection here—this is merely for my own satisfaction: Mr. West, you are asked there whether you know certain facts recited in the question to exist. Do you know whether those facts, in point of fact, exist or not? Answer yes or no.

[fol. 1562] A. No, I don't know.

The Referee: Then I think there is no necessity of anything further.

Mr. Jacobs:

Q. Now, Mr. West, do you think that an expense ratio of 45 per cent is reasonable?

A. Yes, I do.

Q. What did you mean when you said—I think you are the witness who said that 35 per cent was reasonable.

A. No, I never said so.

Q. Perhaps I have in mind some other witness. I thought it was you.

Mr. Hogsett: You are mistaken.

Mr. Jacobs:

Q. You say that you think 45 per cent or 45 cents on the dollar is a reasonable expense ratio?

A. Yes, sir.

Q. And what do you think is a reasonable loss ratio?

Mr. Folonie: We object to assuming there is such a thing.

A. Why, we would be delighted if we could be sure that our losses wouldn't average over 55 per cent.

Mr. Jacobs:

Q. Do you inspect for value in writing Fire Insurance?

A. We do; spend thousands of dollars a year to do it.

Q. Now, in the State of Missouri, where you write a policy of insurance as a protection against fire, do you inspect the property for value?

A. We do.

Q. You mean by that both real and personal?

A. Yes, sir.

[fol. 1563] Q. Now, who have you in the State of Missouri who inspect the property for value?

A. Our special agent for that state.

Q. What is his name and where is he located?

A. Edward M. Curlock (?)—I think that is the initial.

Q. Where does he live?

A. At St. Louis.

Q. You write throughout the state, do you?

A. Yes, sir.

Q. Have you an office in Kansas City?

A. An agent, you mean?

Q. Yes.

A. Yes, sir.

Q. Does Mr. Curlock inspect on his business?

A. He has all the State of Missouri.

Q. When does he do this inspecting?

A. Constantly.

Q. I mean concurrently with the issuance or prior or after the issuance of the policy?

A. No, he does it in his regular line of duties, as he goes to an agency; that is part of his work, to inspect the insurance that has been placed since he was last there.

Q. You mean he inspects after the policy has been issued?

A. Yes.

Q. If you write a policy on somebody's household goods in some town in Missouri, Mr. Curlock goes there and looks it over?

A. No, not so much on household furniture.

Q. If you write a policy on their personal property, does he go and look over the property?

A. Yes, sir.

Q. Does he do that in Kansas City and out in the state generally?

A. Yes, sir.

[fol. 1564] Q. As well as in St. Louis?

A. Yes, sir.

Q. Has he any assistants in this work?

A. No, sir.

Q. Is he able to do the work?

A. Yes, sir.

Q. And does it?

A. Yes, sir.

Q. Now, does this same inspection apply to real estate?

A. Yes, sir.

Q. And he inspects it?

A. Yes.

Q. Now, the purpose of that is to see that you are not carrying over-insurance, isn't it? I mean, that you don't let somebody over-insure with you?

A. Well, that is only a part of it.

Q. Well, one of the reasons?

A. Yes.

Q. And the other is with reference to the general surrounding fire conditions?

A. Yes, sir.

Q. Now, all this information which would tend to reduce fire losses, namely fire conditions——

A. (interrupting): Yes, sir.

Q. Prevention against over-insurance, Mr. Curlock is able to attend to, in the State of Missouri? Is that right?

A. Yes. I don't know along in connection with our local agents who are also following that.

Q. Yes; and your company for how long has been inspecting for value in its writing?

A. I couldn't tell you; a great many years.

Q. Many years?

A. Yes.

Q. You succeed in doing it as a part of your business method?

A. Yes.

Q. Now, do you think, Mr. West, that it is fair to withhold a consideration of the earnings upon the unearned [fol. 1565] premium reserve, in arriving at a rate?

A. Yes, sir, I do.

Q. You think that is fair?

A. Yes.

Q. Despite the fact that you say that all the expenses of every kind and character, not only of the state directly but of the home office shall be either charged in whole or allocated to the state?

A. Yes, sir.

Q. You used the expression of unearned premium reserve, that the unearned premium reserve belongs to you—I mean to your company or your stockholders, or whoever it is.

A. Yes, sir.

Q. That is, you regard it—it is yours?

A. Yes, sir.

Q. Is there anything in the thought, Mr. West, with you, that you have a considerable advance payment in term insurance which you have not yet earned, you say, but which is your money, that should in any way be considered in arriving at rates?

A. That is all discounted in the rate for the term business.

Mr. Hogsett: Explain what you mean by that.

Mr. Jacobs: Just a minute. Let me examine the witness.

Q. Do you take into consideration in fixing the term rate the fact that it does not cost any more in the matter of acquisition for a term policy than for a short time policy?

A. No, we don't take that into consideration at all.

Q. You don't take that into consideration at all?

A. No.

[fol. 1566] Q. You mean to say that although you collect the premium on a term policy of five years or whatever it may be with the same acquisition cost and carry it upon your books with the same overhead expense, that you would acquire a short time policy, that you don't take that fact into consideration at all in fixing the term rate?

Mr. Folonie: We object to the assumption that the acquisition cost on a five year policy is the same as on a one year policy.

The Referee: The witness can differentiate.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Go ahead and answer the question. If there is any help offered you by counsel, why, take advantage of it.

Mr. Folonie: We object to the comment.
The Referee: It is unnecessary.

Mr. Jacobs:

Q. Go ahead.

A. All long term business is written at a higher acquisition cost than short term.

Q. Well, now, you come to me and I buy a year policy on my house—well, just take a five year policy—that has a greater acquisition cost?

A. Yes.

Q. Because you pay the agent a greater cost?

A. Yes, that is the acquisition cost.

Q. That is the only addition?

A. Yes.

Q. I am of course eliminating the agency cost. Of course, that is based on the amount of the premium; but I am talk [fol. 1567] ing about the balance of the cost of getting it and carrying it.

A. Yes.

Q. That is the same, isn't it, outside of the agency commission?

A. Yes.

Q. Don't you consider that fact in arriving at a term—of premium? That you are getting a term premium for the same cost, outside of course of the deduction of the agency commission?

A. As between writing it for one year and five years, we give you 20 per cent discount if you will take it for five years.

Q. I understand. And all the labor and expense of handling five separate accounts for five short term policies would be five times as great as carrying the one five year policy, wouldn't it?

A. Well, that labor is given by the agent and not by the company, you know.

Q. After it gets into your office, though, the expense is the same?

A. Well, the expense per risk in the office isn't anything at all to speak of. To run your dwelling through our office five times in five years wouldn't cost us five cents, as against running it through once in five years.

Q. You mean to say, then, that your clerical help, your stationery, your stamps, your overhead, is not increased at all by carrying five times the amount of work through your office?

A. Well, it is not five times.

Q. Wouldn't it be?

A. No.

Q. What additional work once a policy comes to your office is required as between a five year policy and a one year policy?

A. Well, it comes in submerged with 100 or two or three hundred other policies on the agent's account at the end of [fol. 1568] the month, and it amounts to a five or ten dollar premium and it goes in in bulk through our office.

Q. Of course, if you took just five policies and one five year policy it wouldn't make any difference, but I am talking about your business as a whole; the more you handle, then, in there, the more it costs you?

A. No, not entirely a fact.

Q. How many stenographers—don't you keep a corps of office assistants and don't you, because of the volume of business that you do, I mean by that you don't have any of them sitting around, do you, doing nothing?

A. No.

Q. Because you have work to do, you have them?

A. Yes.

Q. And if your volume of work increased four or five times you would have to increase the number of people?

A. Yes.

Q. And you couldn't handle a vastly increased business with the same force and with the same expense that you could handle a considerably smaller amount, could you?

A. Do you know the English rule for figuring that?

Q. No. I want to know what the facts are.

A. The facts are pretty near the English rule. For every 50,000 in premiums that we put on our books we have to have an additional "clark"—as they would call them over there.

[fol. 1569] Q. In other words, you are saying increased business means increased expense?

A. Yes.

Q. That is what I asked you a while ago.

A. Not in total expense, but it means an additional "clark." It might represent $1,500 a year for that 50,000 premiums.

Q. Now, when you take care of a term policy it costs you less—to handle it—than it would five one year policies, doesn't it?

A. Yes; it will cost a little less; negligible quantity.

Q. Well, it is if you just take five, but when it is the business as a whole it amounts to a great deal—tremendous difference, isn't there?

A. No.

Q. You won't admit that?

A. No.

Q. What you want to say is that it costs just as much to handle one policy as it does five or a hundred as it would 500, or a thousand as it would 5,000?

A. No, I don't say that.

Q. You don't mean to say that?

A. No. What I mean to say is that if we had $50,000 increase in premiums this year we would have to have another clerk. That is as near as anybody can guess it. That is all there is to it.

Q. But other expenses, in the way of stationery and stamps and rooms?

A. We have just bought the Commerce Insurance Company, which we are moving on Friday up to Glen Falls, and they have a business of about 500,000 in premiums; and we expect it will cost us just ten more "clerks."

Q. It will cost you besides your additional help stationery and stamps and additional office expense—and perhaps [fol. 1570] stenographers and additional rooms, sometimes, with increasing business? All those things figure in, don't they?

A. Yes, they do.

Q. So when you handle the one single policy of considerable size or the term policy, as far as your work in your office is concerned, it doesn't cost you any more than a short term policy to handle it, does it?

A. No.

Q. And you can afford to handle it cheaper, can't you?

A. I don't believe there is any difference.

Q. Except you are getting the five year premium in one instance and one year in the other?

Mr. Folonie: It is four year in the other.

Mr. Jacobs: Five year premium in one instance and a one year premium in the other, there is that difference, isn't there?

A. Yes, but we would rather have the one year.

Q. Well, why do you try to sell term policies, then?

A. Well, we can't help ourselves.

Q. They force it on you?

A. Competition does it. We wouldn't ever issue a five year policy if we could help it.

Q. You say you only write term policies because the other companies don't?

A. Yes, that is the custom.

Q. Matter of competition?

A. Up in Canada they have a dominion law that prohibits any company from insuring property for longer than three years.

Q. Why would you rather write one year policies?

A. Because the reserve is smaller and we have a better chance of culling the business if it comes around to us every year instead of being put on the books and laying there three to five years.

[fol. 1571] Q. You say the reserve is smaller?

A. Yes.

Q. Don't you like it?

A. Not especially.

Q. You make a lot of money on it, don't you?

A. Well, we try to get some interest earnings on it, yes.

Q. Certainly. The truth of the matter is that the interest earnings on that frequently saves you from loss, don't it?

A. Absolutely. And that means, too, by the same token, if we had one year business we would have had a great deal more profitable underwriting record, too.

Q. Why?

A. Because, as I say, the turnover is watched quicker and easier and oftener.

Q. But you do make earnings on the reserve, don't you?

A. Yes, yes.

Q. It represents a great part of your earnings doesn't it?

A. Yes.

Q. But you don't like this reserve?

A. Certainly don't. I would rather have it all one year business.

Q. And rely entirely upon your underwriting experience?

A. Yes, sir; yes.

Q. You believe there is more chance to make profit in the underwriting experience than in the investment and interest earning branches?

A. If we did as the Globe-Rutgers, for example, almost entirely confine its business to one year classes, we would make more money.

Mr. Leahy: Would that reduce your costs—expenses?

A. Yes. Acquisition cost is less on one year classes.

[fol. 1572] Mr. Jacobs:

Q. Your acquisition cost is less because naturally your agent doesn't get as much premium on a one year premium as on a five year premium—isn't that it?

A. The per cent on the term business is a higher commission than it is on the one year class. The per cent of commission. If he gets a four year premium for a five year policy, why, he has got four years' commissions all at once.

Q. And you have got four years of money or premiums all at once, haven't you?

A. Yes.

Q. And you have the use of it?

A. Yes, but then——

Q. (Interrupting.) Long before you earn it.

A. Yes.

Q. And you make money on it, don't you?

A. We get interest earnings on it.

Q. And you keep them, don't you—your company?

A. Yes.

Q. Incidentally your stockholders, if everything is all right, have dividends—for dividends to be declared—get it, don't they?

A. That is where we get our dividends. We don't make it out of our underwriting.

Q. You would prefer, though, you said, not to have the reserve and make it all out of underwriting?

A. Only the yearly reserve, and make it out of underwriting. We would make more money that way.

Q. Now, how do — take care of these earnings upon the unearned reserve in fixing the rate for term insurance?

A. We don't take it into account at all.

Mr. Jacobs: That is all.

[fol. 1573] Cross-examination by Mr. Folonie:

Q. During the war, when the commissioners arbitrarily took the price, for instance, of government liberty bonds, and put them in as assets at 100 per cent, although the market was down to 92, did that operate to protect and save small companies from becoming insolvent during that period?

A. Yes, it did.

Q. And if they had taken the market value during that period wouldn't a great many of the smaller companies have been put out of business?

A. Yes, sir.

Q. And that would have been true although their assets, their securities, were just as stable and sound and good as they were before the war came on?

A. Yes, sir.

Q. They had the same amount of them?

A. Yes, sir.

Q. In other words, the commissioners were sufficiently considerate not to put little fellows out of business on a purely paper profit and loss which didn't mean an actual profit and loss, is that it?

A. Yes, sir.

Q. You used the term "inland marine," and I think it is sometimes also called inland navigation insurance. What do you include in that term, "inland marine"? What does it comprise, in the general understanding in the insurance business?

A. Covers all inland waters including canals and rivers, and also includes transportation insurance either by railroad or trucks.

Q. Does it include such things as parcel post insurance, for example?

A. No. That is a distinct class and so regarded by all insurance departments.

[fol. 1574] Q. Tourist insurance?

A. Separate.

Q. Is inland marine insurance conducted in the State of Missouri?

A. By us, you mean?

Q. Yes.

A. Yes, we do some truck insurance. I think that is all we do there.

Q. And you don't write any railroad business in that state?

A. No, not anywhere.

Q. Some of the companies do, to your knowledge?

A. Yes. We are not in that, though.

Q. You have stated that an underwriting profit in your judgment was to be derived by taking the earned premium and the incurred losses and the expenses and thus arriving at an underwriting profit. I don't know whether you stated, though, what percentage of underwriting profit you thought was reasonable?

A. No, I did not state that.

Q. What, in your judgment, would be a reasonable underwriting profit, from your knowledge of the business?

A. I wouldn't think that anybody would object if the company had an underwriting profit of 5 per cent on earned premiums.

Q. And is that inclusive or exclusive of a charge for conflagration?

A. No, that is exclusive. There should be a charge, a due charge made for that.

Q. And in the present state of knowledge in the business, what do you think is the reasonable charge in that particular?

A. 5 per cent.

Q. Do you think—what part of the capital of the company and what part of your surplus, of your company for example, is answerable to policyholders in Missouri who

[fol. 1575] suffer fire losses during the time that your policies are in force?

A. All of our capital and surplus.

The Referee: Just a moment. Speaking of the 5 per cent profit and the 5 per cent conflagration hazard a moment ago, you referred to those percentages on the total volume of premiums on business written?

A. No, I referred to the earned premiums.

The Referee: Proceed.

Mr. Folonie:

Q. I think you said your entire capital and surplus would be responsible for losses in the State of Missouri. How many years has your company been engaged in accumulating its present surplus?

A. 72 years.

Q. And during that time, except for dividends which may have been paid out, have you compounded that by re-investing the interest earnings that you derive from your investments?

A. Yes, sir.

Q. Was there any reason except a desire to build up a fund for the protection of policyholders why you might not in, say, 5 or 10 or 15 years ago, divide up all your net surplus beyond the amount of reserve properly set up, and divide it among the stockholders as dividends?

A. No reason at all, except for that purpose.

Q. In your viewpoint, are the earnings of a company which are left in the business, and the interest earnings on which they are compounded and which remain in the company over years of time, as much a contribution by the stockholders as if dividends had been paid out to them and then they had made cash contributions to a surplus fund?

A. Without any question; identical.

[fol. 1576] Q. Do you therefore draw any distinction between that portion of surplus which may have been paid in in cash by stockholders and that portion which they have left in the business and refrained from withdrawing in dividends, when the surplus was of such size as to warrant it?

A. No, no difference whatever.

Q. You think that whereas your capital and surplus are in their entirety answerable to policyholders suffering losses in any state, for example, Missouri, that it would be just to divide the capital and consider a portion of that capital as if it were in Missouri, in proportion to the business done, and another portion as being in New York, and various states?

A. Except as you might want to allocate it for ascertaining what rate you should make in order to get a satisfactory earning upon that amount of capital, there is no separation.

Q. Now, with respect——

The Referee: Now, just a moment. I don't know that I clearly get the witness' meaning there. You asked him a question and he didn't answer it, except inferentially. Will you read that last question and answer, Mr. Blume?

(Question and answer read by the reporter.)

The Referee: You were asked if you thought that would be just, and you answered just simply stating an exception. Do you think it would be just, except for the purpose of rate-making?

A. Well, my first thought when he made the inquiry was that he had in mind to isolate a portion of our capital and surplus for the protection of Missouri policyholders. My only thought in isolating a portion of it in proportion to [fol. 1577] the amount of business done in Missouri was to say there is so much capital that we are allocating to Missouri for the purpose of determining what rate we should charge, in order to obtain proper earning upon that capital.

The Referee: And you think that method would be just or unjust?

A. Well, I—(witness laughs)—of course, I have in mind, back in my early testimony, the suggestion that I made that that capital and surplus be allocated in that way.

The Referee: Now, Mr. West, pardon me. The question put to you by counsel is whether or not you think that method would be just or unjust. Now, if you will kindly say whatever you please and then make whatever explanation you choose, you will enlighten the court and counsel.

A. I think it would be just.

Mr. Folonie:

Q. Now, what proportion of the capital would you consider should be in Missouri—should be in a certain state with its business fluctuating from year to year as the business naturally does in different jurisdictions what proportion of the capital and surplus would you allocate to a state if you were going to follow that course?

A. Well, of course, that would make a frequent (witness hesitates).

The Referee: Allocations?

A. —allocations, and changes of your rate formula, if you followed that closely. I am only speaking in a general way to get at a basis. For instance, that state requires that an insurance company must have a certain amount of capital before it can be organized in that state. When it does—[fol. 1578] now, it is a fair assumption that they have a right—if we confine all our business in the State of Missouri, why, we are entitled to fixed rates that will enable us to make a fair earning on that capital.

Mr. Folonie:

Q. I wish you would discuss that a little further, in the light of your previous statement that you thought a 5 per cent underwriting profit was reasonable upon the business done—because in answering that question you apparently didn't take capital or surplus into account.

A. I wouldn't be suprised if in the average company the amount of capital and surplus which you would allocate to a state would not be materially different than 5 per cent of the premiums they did there. Now, take our own company, for instance. We have got 4 million dollars of capital and surplus; 5 per cent of that would be $200,000. I doubt very much whether our premiums are $200,000; they are pretty close to it—in the State of Missouri. So you see it practically leaves the same result in a different way—reaches the same result. Now, 5 per cent underwriting profit would be just the same as 5 per cent on its capital and surplus allocated to that state.

Q. Suppose they came to different figures, which do you think is the just and proper method of arriving at an underwriting profit, the volume of business done in the juris-

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diction or a consideration of the capital and surplus that the company has?

A. 5 per cent on the turnover. That is my suggestion, or answer to your question a moment ago, that we should have a 5 per cent underwriting profit.

[fol. 1579] The Referee: On the earned premium?

A. On the earned premium, yes, sir.

Mr. Folonie:

Q. I wish you would, for the benefit of the court, direct your thought to this problem: You take a company like the Aetna Insurance Company, been in business a hundred years and over, and your company, for instance, in business since the Civil War, and having accumulated a capital and surplus over all that time and then taking a comparatively new company, organized, say, within the last ten years, with a comparatively small capital and surplus but doing a large volume of business. Do you think that the measure of the earnings that should go to that company should be measured by whether it had been able to accumulate a surplus or not, or by the volume of business it does?

A. Well, it would be fairer to do it on the volume of business in this case, or in those cases.

Q. If the company should divide—one company should divide its surplus among policyholders and another company retain its surplus, one company capitalized for a small amount and another company capitalized for a large amount, and assuming that these companies which I am contrasting do the same volume of business, do you think the shifts in the amount of the capital and the surplus as they increase or decrease by payment to stockholders, or leaving them in the pouch, have any just relation to the amount of compensation that the policyholder ought to pay for the indemnity he is securing?

A. That is rather a long question, there. Do you mean to say—do you want me to say whether a policy in a [fol. 1580] company that has a large capital and large surplus is worth any more than in a company who has a small capital and small surplus?

Q. No, I will ask you another question and see whether this carries my thought, perhaps, a little bit more clearly.

Do you think that the earnings that the company makes upon its capital and upon its invested surplus, which is accumulated over a period of years, that the company—that the interest or returns it gets upon that money should be taken into account and used to reduce the amount of premium that a policyholder should pay for his policy?

A. No, sir, I do not.

Q. Do you think that if the company invests in government bonds or speculative—comparatively speculative securities—and takes big profits and big losses on its investments, should that affect the policyholder as to the amount he pays?

A. No, sir, not in the least.

Q. Now, then, if you compute the amount of the premium returns upon the entire earnings of the company it would automatically require the policyholder to profit by the fortunate investments and suffer from bad ones, wouldn't it?

A. Yes, sir.

Q. Do you think that is a proper method for a stock company to conduct its business?

A. No, sir.

Q. Do you think it is proper that policyholders should suffer from your investment mistakes, in their premium rates?

A. No, sir.

Q. Do they think they should have anything to do with your income from your investments one way or the other?

A. No, sir.

Mr. Polonie: That is all with this witness.

[fol. 1581] Redirect examination by Mr. Jacobs:

Q. When you make that statement, Mr. West, you are animated, I presume, entirely by a thought for the benefit of the policyholder—or the stockholder?

A. Policyholder. They—he should not be burdened with your losses and he should not receive any benefit from your gains.

Q. Now, in this contention, where the policyholders of the State of Missouri are asking to be permitted to have the benefit of your earnings upon the premium reserve,

and your losses, if there are any, to stand them—you are opposing that for the benefit of the policyholders of the State of Missouri?

A. Yes. They have nothing to do with it at all.

Q. That is your real reason for it, that they have nothing to do with it?

A. Yes.

Q. That is your money?

A. This is our money.

Q. And the stockholders' money?

A. Absolutely.

Q. And they are entitled to it?

A. Yes, sir.

Q. And that is your real reason for opposing a consideration of these matters in the matter of rate making, isn't it?

A. Yes, sir.

Q. Certainly. Now, Mr. West, do you figure your loss ratios on automobile collision and other forms of insurance outside of fire in making up your reports to the State of Missouri upon which rates shall be made for fire insurance?

A. No; they are not included in the fire insurance rate on property.

Q. Should they be?

A. No, they should not.

[fol. 1582] Q. In other words, if you make a report to the State of Missouri in which there is a loss ratio upon automobile collision, that ought not to be considered in arriving at a fair rate?

A. No, sir.

Q. Because it hasn't any business there, has it?

A. No, sir.

Q. Or anything else excepting those things that are strictly allied to fire insurance?

A. Yes, sir.

Mr. Jacobs: That is all.

Recross examination by Mr. Folonie:

Q. Then the profit you are talking about, are you entitled, in your judgment, to the 5 per cent profit you mentioned upon your entire business in the state—upon your entire business done in that particular state?

A. Yes, sir.

Mr. Folonie: That is all.

Mr. Jacobs (resuming redirect examination):

Q. You mean you are entitled to 5 per cent on your premiums received?

A. Yes, sir; on all these different classes.

Q. On premiums received?

A. Earned premiums.

Q. Well, now, do you mean to say that in arriving at a fire rate that you are entitled to take into consideration the 5 per cent upon premiums earned in automobile collision insurance?

A. No, they have no relation to each other at all.

Q. They are entirely separate?

A. Absolutely separate.

[fol. 1583] Q. You are talking about fire insurance?

A. Yes.

Q. And if you are satisfied with 5 per cent on underwriting, did you mean what you said a while ago when you said you would prefer to do an underwriting business and get rid of this term insurance?

A. Do a one year business, you mean?

Q. Yes.

A. Sure, I did mean that.

Q. Although you pay as much as from 18 1/2 to 37 per cent under present existing conditions for the five years in question? I mean dividends?

A. Yes.

Q. Outside of your surplus increases?

A. Yes.

Q. All right. Now, you spoke about the acquisition of a surplus for the purpose of making more secure the policyholders. Wasn't your original answer early this afternoon that the acquisition of a surplus was for the purpose of creating a condition of stability which would attract insurance business? Isn't that one of your chief reasons for making a large surplus?

A. Well, you couldn't attract that stability unless you gave the policyholders the protection which they all desire, and that comes from a large surplus.

Q. I say, the surplus is an asset of your business to the end that it creates a condition of stability that attracts policyholders to your company?

A. Yes.

Q. That is the purpose of having this surplus, isn't it?

A. Yes, very important purpose.

Q. Now, you say it is just the same as if your stockholders had paid this money into this company. Now, whereas as a matter of fact they were receiving dividends at the time those savings were set aside, constituting a sur-
[fol. 1584] plus, weren't they?

A. Yes, sir.

Q. And that surplus, which is nothing more, is it, than an undivided profit, is there earning your dividends today, isn't it?

A. Yes, sir.

Mr. Folonie: That is all.

By the Referee:

Q. Mr. West, I gather from your testimony and some other evidence heard in this investigation that not only a law but prudent business methods require that a company engaged in this line of business shall have a reasonable amount of paid up capital stock—say for example 1 million dollars?

Mr. Folonie: $200,000 is the minimum in New York.

The Referee:

Q. Well, we will say $200,000, since that is the minimum of this state and in the state of Missouri. Now, in addition to that, it is necessary in order to carry on the business that the company should have a surplus, that is true, isn't it?

A. Yes, sir; very important.

Q. Of course, above the minimum prescribed by law as to capital and the minimum required by business necessities as to surplus, the amount both of capital and surplus are properly determined by the judgment of the directing officers of the company, that is true, isn't it?

A. Yes.

Q. Now, then, would you regard as reasonable a rate which allowed after all expenses of every kind and char-

acter were paid, after all proper reserves were provided [fol. 1585] for, the distribution of a net sum annually in dividends of, say, 50 per cent of the capital and surplus, as being a reasonable rate?

A. 50 per cent—you mean a reasonable rate——

Q. (Interrupting.) Would a rate which would yield such a net dividend on capital and surplus annually, after providing for all expenses of every sort and setting aside of all reserves which might be required either by law or by good business, would that be a reasonable or an unreasonable rate?

A. That would allow you to declare 50 per cent dividends on capital and surplus?

Mr. Folonie: Yes.

A. That is a pretty juicy rate.

The Referee:

Q. Then you think that would be an unreasonably high rate?

A. You are speaking now of underwriting earned premium profits?

Q. Yes.

A. There is no such thing in existence anywhere, judge.

Q. That was not my question. Now, my question is this: Would you regard that as a reasonable or an unreasonable rate?

A. I should say it was an unreasonable rate.

Q. Unreasonably high?

A. Yes.

Q. What about 25 per cent dividends?

A. That is high, too. Now, I am speaking of dividends or per cent on capital and surplus.

Q. We both are. What about 15?

A. That is high, too.

Q. What about 10 per cent dividend?

A. That is about what it should be.

[fol. 1586] Q. You think, then, that that would be a reasonable, and by that I mean a just rate, taking all the factors into consideration?

A. Yes, sir.

Q. In so estimating it do you consider at all the interest—and by that I mean the just rights of the insured—as well as of the insurer?

A. Yes, sir; yes, sir.

Q. Then as an impartial disinterested man, seeking to do justice and to fix a reasonable rate, what rate of dividend on capital and surplus would you regard as sufficient?

A. I would say that a rate of 6 per cent on the capital and surplus was a fair return to a stockholder, with about 6 per cent more added to the surplus every year for the unknown and unexpected—or expected—catastrophes, which are bound to occur.

Q. Then that would give a total dividend on the basis suggested of 12 per cent annually?

A. Total margin of 12 per cent.

Q. Is that larger or smaller than the dividends which your company has paid on the basis on which it has been calculating dividends in the last five years?

A. That is twice as much as what our company has paid.

Q. Then your company has progressed in its business in the manner shown by your evidence on a basis of about one-half of what you say would be a reasonable rate?

A. It has progressed from its interest earnings, you know, entirely, and not from its underwriting profits.

Q. I am not concerned about the source, but I am merely speaking of the fact.

A. Yes, that is a correct statement. We have progressed.

[fol. 1587] The Referee: That is all.

Mr. Folonie: That is all.

(Witness excused.)

The Referee: We will adjourn, gentlemen.

(Whereupon an adjournment was taken until 10:00 o'clock a. m., the following day, the same being Thursday, the 18th day of October, A. D. 1923, at which time parties again reconvened at the same place and the following proceedings were had:)

FREDERICK C. BUSWELL, called as a witness on behalf of the defendant, having been first duly sworn by the referee, was examined and testified as follows:

Mr. Folonie: If the court please. Mr. Frederick C. Buswell, vice president of the Home Insurance Company, is present in the room and request was made by our opponents that he be produced so they might tender his testimony; in compliance with the terms of the stipulation we have him present in the room this morning.

The Referee: And now upon the stand.

Mr. Folonie: Yes, sir.

The Referee: Proceed, gentlemen.

Direct examination by Mr. Barker:

Q. Mr. Buswell, what position do you occupy with the Home Insurance Company?

A. Vice president.

Q. Which one of the vice presidents?

A. I am the senior in point of service. We don't designate them by numbers.

[fol. 1588] Q. Not as first, second and third?

A. No.

Q. How long have you been vice president of the Home?

A. 1902 I was second vice president, and then in 1904 I was made vice president; all the numbers were obliterated.

Q. Well, Mr. Snow is the president?

A. Yes.

Q. Mr. Buswell, you testified before what is known as the Lockwood investigating committee a couple of years ago?

A. I did.

Q. I will ask you if in the course of that testimony you used this language (reading): "I take the same viewpoint as that taken by Mr. Evans, to the effect that what the directors of a fire insurance company choose to do with their assets is nobody's business. It is the business of the stockholders." Was that your idea at that time?

A. That is correctly reported, yes, sir.

Q. Further: "It has no trust relation to the public at all, provided its solvency is maintained. That is the basis on which I would oppose a limitation of the character of investments as far as my insurance companies are concerned." That is a correct quotation?

A. That is substantially correct, yes. A long time ago, you know.

Q. Yes, sir, I realize that, Mr. Buswell. Now, what insurance companies are you connected with outside of the Home, Mr. Buswell?

A. The Franklin Fire Insurance Company of Philadelphia; vice president.

Q. Any other companies?

A. The City of New York Insurance Company; vice president also.

[fol. 1589] Q. Are you an officer or director in any private corporations that have dealings with either of these insurance companies, in the way of securities?

A. No, not in the way of securities. I am director of the Pacific Bank, and we have accounts with two of them. That is simply an ordinary official banking transaction.

Q. Mr. Snow is also an officer and director in one or more banks of New York?

A. A director.

Q. And you try to keep your insurance accounts in these banks in which you gentlemen are directors?

A. Not all of them. We have accounts in a number of banks.

Q. Would you say that of the banks in which your officers are directors that you have 50 per cent of your accounts?

A. No; much less than that.

Q. Now, reading further from your testimony in the Lockwood investigation, I will ask you if this was your statement (reading): "Fire insurance companies have a right to do with their money as they please, provided always they maintain complete solvency for the protection of their obligations of all kinds. If the directors authorize a company to buy and sell stocks for profit, any kind of stocks, it is my judgment that the state has nothing to do with that, so long as the company remains unquestionably solvent. I recognize that this is a business impressed with a public use or public trust." Was that your statement?

A. Yes.

Mr. Folonie: We object to the interrogation as to the latter portion, as to whether the business is impressed with a public interest or trust, as calling for a legal

[fol. 1590] conclusion and not a question of fact, and therefore we object to that part of the interrogation.

The Referee: The question as put simply inquired whether or not the witness made the statement. Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: My recollection of that is this: That after the first part of that question was asked and answered counsel inquired whether I was aware of the decision of the United States Supreme Court to the effect that is set forth in the latter part of that answer. Of course, I admitted that I was aware of that decision.

Mr. Barker:

Q. Now, further testifying, I will ask you if this was your testimony: "I admit that our business is impressed with a public trust and yet I still insist that we have the right to do just as we please with the assets, because the owners of those assets are liable for the amount." That was your testimony, was it?

Mr. Folonie: We object to that part of it as to the supposed admission that it was affected with a public trust, as a legal conclusion, and because any supposed admission of the witness in that regard would be respecting a question of law and not one of fact and therefore is incompetent as either an assertion against interest or as a statement respecting which any impeachment of the witness would be in any way permitted if he testified to the contrary.

The Referee: Overruled.

[fol. 1591] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. That was your testimony, Mr. Buswell?

A. Substantially so.

Q. Yes, sir. Now, Mr. Buswell, what you mean, then, as vice-president of the Home Insurance Company, is, that

the board of directors of the company, being in charge of the corporation, it is their duty to run it?

A. Precisely.

Q. And they are answerable to the stockholders of the corporation?

A. They are.

Q. Now, in the conduct of your business, Mr. Buswell, you receive insurance premiums invariably in advance, do you not?

A. We are supposed to, yes.

Q. I mean that is the theory, that insurers pay in advance for their policy, if it is one year, two years, or whatever it is?

A. Yes.

Q. Now, having received that premiums in advance, Mr. Buswell, you naturally invest it, do you?

A. We invest it if we get it.

Q. I mean when you get it you try and invest it?

A. Oh, yes; keep it working.

Q. That is what I mean. Now, are those premiums what you call unearned premiums?

A. Yes, premiums are unearned until the policy has expired.

Q. And do you call that money your unearned premium reserve?

A. We have an item unearned premium reserve in our statement. That is made up, of course, of sums aggregating [fol. 1592] the amount of premiums on unexpired policies. An unearned part of those premiums. That fund does not come from current premiums.

Q. Where does it come from?

A. Well we have to find it somewhere else, because the premiums that are being written now from day to day are used for paying the expenses, agent's commissions, and losses, and as a matter of fact the money goes out as fast as it comes in; just about as fast. Missouri does not contribute anything to that.

Q. Beg your pardon?

A. Missouri has contributed nothing to that fund for a long time.

Q. Nothing to what fund, your unearned premium reserve?

A. Yes.

Q. Meaning by that that your business has not been profitable in Missouri?

A. Yes. Money goes out as fast as it comes in—or a little faster, sometimes.

Q. Now, this unearned premium reserve, you use it in case you had to return to a policyholder who cancels—among other things?

A. Yes. That is to say, we use some money and deduct it from that item.

Q. And your unearned premium reserve is also liable for losses?

A. I should say not.

—in case of loss.

Q. Including your unearned premium reserve?

A. No.

Q. Then your unearned premium reserve is not liable for losses?

A. I should say not.

Q. Is it segregated?

[fol. 1593] Mr. Folonie: We object to confusing the unearned premium liability with the assets of the company, if the court please, which are on the other side of the ledger entirely. Objected to as confusing.

Mr. Barker:

Q. Now, Mr. Folonie having told the witness how to answer the next question, I will proceed. Listen carefully to Mr. Folonie.

Mr. Folonie: I object to counsel's comment on my objection, and I wish a ruling on my objection.

The Referee: I think the objection to the comment is well taken. The objection to the question may be overruled, because it is reasonable—may be presumed that the witness may make differentiation as the truth may require.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. I had not confused you in any way, had I, Mr. Buswell?

A. I think not.

Q. Not at all. Your unearned premium reserve, I understand is not set aside and segregated and kept by itself in such a fund, is it?

A. No, it is a bookkeeping item entirely.

Q. That's it. And it is thrown right in with the rest of your money?

A. Oh, yes.

Q. Now, in your investments, Mr. Buswell, you invest money in many forms of securities?

A. Yes.

Q. Have you considered whether or not it would be more profitable and safe to invest more of your money in real estate mortgage loans than in stocks and bonds?

[fol. 1594] A. That is a matter that is entirely in the hands of the finance committee. We have nothing to do with it.

The Referee: Pardon me, Mr. Buswell. The counsel asked one question. You answered another. I find that gives occasion for a great deal of misunderstanding, confusion and delay. If you will kindly notice the question, and answer the question, with such explanation as you deem proper, I think it will speed up the examination.

The Witness: Very well.

Mr. Folonie: I think that question you may answer yes or no, or that you have no opinion.

The Referee: Now, read the question again so the witness may see a specific example.

(Question and answer read by the reporter.)

A. Well, I would say no, we have none.

Mr. Barker: I notice in your testimony——

Mr. Folonie (interrupting): If you can adopt a form where you can say yes or no or that you don't know at all, it will facilitate things for you and for us, too. Pardon the suggestion.

Mr. Barker:

Q. I notice in your testimony in the Lockwood Investigating Committee—I will ask you if you made this statement: "I notice from the exhibit that has been in evidence of the Home company that our net average returns over the period of 15 years from bonds and stocks has been 3.74 per cent, and for mortgages we held 5.34 per cent." Is that your statement?

A. I can't undertake to say now. I don't know; too long ago to carry figures in my mind.

[fol. 1595] Q. You do know, do you not, Mr. Buswell, that your investments have been—your returns have been greater on your investments in real estate mortgage loans than in stocks and bonds, don't you?

A. No, I don't know.

Q. You don't know that?

A. No. This is out of my province. I might say this, that our mortgage loans amount to about two or three thousand dollars. I think there are two of them.

The Referee: About two or three thousand dollars, did you say?

A. Yes, the principal in mortgages; very small.

Mr. Barker:

Q. That is each mortgage, you mean?

A. No, I think there are two mortgages, until a year or so ago.

Mr. Folonie: Let me suggest to counsel for possible assistance that Mr. Kurth has sent over by this witness quite a list of their assets and what they are in detail, which was requested of him the other day. It is available here if counsel finds it will serve their purpose in examining this witness.

Mr. Barker:

Q. I understand, then, you carry very few real estate mortgage loans?

A. That is true.

Q. Is there any reason for that, Mr. Buswell?

A. Only that our finance committee thought other investments were wiser.

Q. Did you consider the liquid nature of the investments?

A. Doubtless that was one consideration.

Q. But do you think stocks and bonds are more liquid than real estate mortgage loans?

A. Quite sure they are.

[fol. 1596] Q. You are never called upon to pay a loss until 60 days, I believe?

A. Oh, yes.

Q. That is, legally, I mean, Mr. Buswell.

A. There is a 60 day clause in most fire policies now, but it is rather an exception that that is used.

Q. What I mean is that you could avail yourself of 60 days if you cared to?

A. It is possible.

Q. But don't you think in those 60 days you could dispose of real estate mortgage loans about as easily as stocks and bonds?

A. I have no opinion on the subject. I don't know.

Q. Mr. Buswell, are you acquainted with the fact that in January, 1920, there was an increase granted by the Missouri authorities of 15 per cent, or did you know that?

A. I do not know.

Q. The period being investigated is from January 1, 1917, to January 1, 1922. Now, if a 15 per cent increase was granted in 1920, that would not be fully applied until five years, would it—on a five year policy, for instance?

A. No, evidently not.

Q. So that as to what that increase granted in January, 1920, will ultimately result in, it can't be ascertained now?

A. I don't know. I am not at all familiar with those underwriting details about Missouri business, so I don't know anything about it.

Q. Now, you distinguished between underwriting and investments of insurance companies—do you?

A. Oh, yes.

Q. Beg pardon?

A. Certainly.

[fol. 1597] Q. Now, all of your moneys received from underwriting activities and from investment activities are placed in one common fund?

A. Yes.

Q. And the expenses of your company are paid out of that common fund?

A. That is right.

Q. Including salaries and so forth?

A. Yes.

Q. Now, the person or persons who handle your investment activities are paid just the same as the persons who handle your underwriting activities?

A. They are paid in the same way—or the same employes of the company if that is what you mean.

Q. Out of the same fund?

A. What do you mean by the same fund? We don't segregate our receipts from different sources and put certain receipts in one bank and some other receipts in another bank, as suggested. We have a number of bank accounts and when the cashier needs money he draws it wherever he pleases; whichever bank he chooses.

Q. Now, then, Mr. Buswell, the theory of insurance is that you add to your premium rate for the purpose of taking care of either your expenses—taking care of your expenses and losses, isn't it?

A. Why, no. Premium rate is supposed to include those items.

Q. Now, then, in case, for instance, a conflagration hazard as generally understood happens, an increased rate follows to take care of it?

A. Oh, no.

Q. Now, take for instance what has been referred to as the San Francisco fire. After that fire there was a general increase of rates throughout the United States, was there?

A. There was an effort made to get a general increase [fol. 1598] in rates, because that was a major conflagration that ran up into the hundred millions; $250,000,000. That was necessary for the solvency of the companies.

Q. So that any extra expense which is met by the companies is passed on to the policyholders?

A. Not always, no

Q. Well, that is the theory of insurance, is it not?

A. The theory is that the charges from insurance should be sufficient to take care of all losses, and including minor conflagrations; had one at Berkeley the other day of 10 millions that will make no increase in rates.

Q. Now, then, Mr. Buswell, of the unearned premiums in the nature of a reserve, there has been something stated about a hidden profit or an invisible or an unseen profit in the unearned premium reserve. Do you know what that means? Can you explain it to me?

A. I haven't the slightest idea what it means.

Q. You know Mr. Alfred M. Best?

A. Yes.

Q. Mr. Best publishes insurance publications?

A. Mr. Best—yes, he is a publisher of financial information about insurance companies, fire, life and casualty.

Q. And considered an authority on that subject?

A. Oh, I would say not. I would say Mr. Best is a painstaking, careful collector of information, and a publisher.

Q. And he publishes information which is relied upon in the insurance world?

A. Yes, information which he gathers from statements like that every year.

Q. And that is reasonably accurate?

A. As far as I know.

[fol. 1599] Mr. Folonie: You are talking about his publications?

A. Yes, that they are correctly transcribed.

Mr. Barker:

Q. Yes, that is what I asked you. Did you hear Mr. Best make this statement at the Lockwood investigating committee, or did you read his statement, as follows: "Experience has shown that there is a very large profit in this liability reserve that the law has required to be set apart for extra safety. Of this reserve, approximately ½ is profit, which is nowhere shown upon the books of the company. The liability reserves are invested in securities and bring in returns. These 10 companies"—including your Home—"are earning in nearly every case over 1 million dollars by way of return on this reserve. They are putting that earning on this reserve fund into their own profit and surplus and using it for their own purposes." Did you read that statement of Mr. Best's?

A. I have a dim recollection of having read it at the time, yes.

Q. Do you know what Mr. Best means by that, Mr. Buswell?

A. No, I don't, I think Best is theorizing a whole lot.

Q. Being an insurance man and vice-president of this company I thought probably you could explain to us who don't know what Mr. Best meant?

A. Mr. Best meant, I presume, that among other investments the companies have invested in securities that fund as well as the other funds that they have—capital and surplus or any other reserves they have—and the interest is being collected. His inference from that fact is, though, in my judgment, entirely wrong.

[fol. 1600] Q. Do you recognize any hidden profit which is not shown on your books, from the unearned premium reserve?

A. No, certainly not. Our books show everything.

Q. Now, did you read this further statement in the same connection from Mr. Best. "If the income from that reserve"—unearned premium reserve—"were credited to the fund they could reduce the premiums about one billion dollars per annum if they wanted to"?

A. Well, I suppose he made that statement, but I think it is absurd.

Q. Do you recognize any way of reducing fire insurance rates by considering some of the profits in the unearned premium reserve which are not apparent?

A. There are no profits in the unearned premium reserve which are not apparent.

Q. That is what I want to know. Are there any profits which are not apparent?

A. No.

The Referee: By "apparent" you mean shown on the books of the companies?

Mr. Barker: Are visible.

The Witness: They are all apparent. Everything there is to know about the unearned premium reserve or any other items are shown on the books of the company and shown on the statements we have made.

Mr. Folonie: What do you mean by that?

A. The statements we make annually to the Insurance Departments of the states.

Mr. Barker:

Q. And there is nothing from the unearned premium reserve which is not apparent on those statements?

A. Not a thing.

[fol. 1601] Q. Now, I understand the unearned premium reserve is treated just like your surplus, for instance?

A. Yes.

Q. And earns, I assume, about the same rate of interest?

A. The item in the statement which is called unearned premium reserve is invested just as other funds are, but those funds, just as the capital and surplus, belong to us. Naturally, they would be invested, as other funds of ours are.

Q. There is no separation so far as investments go?

A. Oh, no.

Q. Mr. Buswell, as an insurance official, have you ever had occasion to investigate and consider the effect upon the earnings of your company of a reduced rate, on the theory that it would increase the volume of business?

Mr. Polonie: We object to it as speculative and incompetent for interrogation and contrary to the theory of the statutes of Missouri, which are upon the predicate of a five year antecedent experience to the time when a rate order is in contemplation or made.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

(Question read by the reporter.)

A. We are considering that every minute. We are constantly aiming to persuade property owners to improve their property, offering as an inducement a reduction in their rates. That is the theory of schedule rating. It is up to the owner of the property to reduce his rate if he [fol. 1602] wants to. We will show him how. We are doing it daily. We want him to do it.

Mr. Barker:

Q. Well, as a matter of fact, Mr. Buswell, isn't it really immaterial to fire stock companies as to whether rates are

high or low, because it is passed to the policyholder anyway?

A. Oh, no. Oh, no. We would much rather write a risk at 20 cents than one at 75 cents or a dollar.

Q. Why, Mr. Buswell?

A. Because it implies a very much better hazard and a much smaller chance of loss. That is why we are trying to get our customers to improve their risks and offering them inducements of lower rates if they will do it.

Q. But the rate that is charged and received, regardless of what it is, it is paid by the policyholder anyway?

A. Yes. We have to take things as we find them, and it is up to him to improve it and get a lower rate if he wants it.

Q. And if he doesn't, that is his business?

A. We will show him how. Yes.

Q. So that in the end from a financial standpoint it makes very little difference to fire stock companies whether rates are high or low, the policyholder pays them.

A. I wouldn't say that. I don't agree with that.

Q. Now, Mr. Buswell, from a financial viewpoint only, eliminating the moral idea, is a conflagration a good thing for insurance companies or a bad thing?

A. I can't conceive how it can be a good thing.

[fol. 1903] Q. Does it stimulate insurance?

A. Very limited way.

Q. But to some extent?

A. Very limited; if at all.

Q. Now, the expenses, I think, of the Home Company, it has been testified, ran about 38 per cent. That means that about 38 cents out of every dollar received on premiums is used for expenses?

A. That is right for the last year.

Q. Would you say that during the five years—that is just an estimate, I realize—during the five years in question, from 1917 to 1921, inclusive, that would be about the average expense of your company?

A. No, that is a little higher than our average for that period. Taxes increased the last two years, and some other items also.

Q. Now, an increase in taxes, that increase is passed to the policyholder also, is it?

A. Why, it comes out of the premiums; the rates. Suppose that it would include it.

Q. And it is figured in determining whether or not you have made a profit or loss?

A. Naturally. It is a valid item of expense.

Q. Mr. Buswell, do you think that 38 per cent for expenses is a reasonable expense or an unreasonable one?

A. I think it is reasonable. It is lower than the average.

Q. Average of what?

A. Of all the companies; of all the fire companies.

[fol. 1034] Q. Have you had occasion to investigate the expense, for instance, of mortgage loan companies on making loans on property, to compare it with your expense?

A. I don't see how it can be compared.

The Referee: The question was, whether you had had occasion to make such investigation.

A. No; had no occasion.

Mr. Barker:

Q. You had occasion to investigate in connection with your fire business the expense of banks who loan money, also?

A. No.

Q. Mr. Buswell, have you had occasion to investigate mutual fire insurance and reciprocal fire insurance?

A. No, I have not.

Q. You do know that there are mutual companies and reciprocal companies that write fire risks?

A. Yes; oh yes.

Q. Did you read in the press this statement from the Lockwood investigating committee and do you agree with it: "The mutual companies return to their policy holders an average of 25 per cent of the proportion of the premiums written by them, besides accumulating large surplus out of their profits"?

A. I don't remember reading it, but that is substantially true, I think.

Q. Then how do you account for the fact that the mutual companies can return to their policyholders 25 per cent and at the same time create large reserves when stock companies couldn't do it?

A. Well, that is a large question. I know mutual companies that return 94 per cent of their premiums to policyholders. One reason is that they write selected business. [fol. 1605] They write limited classes; maybe only sprinklered business. Some write only, we will say, wood workers and lumber. I know one that only writes canning factories. They don't write a general business. Their services are not available to the average run of property owners. It is selected, choice, handpicked business, and the service they render is not the kind the stock companies render.

The Referee: That is what you call preferred risks?

A. Strictly preferred and selected and handpicked.

The Referee: And handwrapped.

Mr. Barker:

Q. And the reason they are able to return to their policyholder and create the surplus, they have fewer losses than you do?

A. Yes, sir.

Q. And those companies, they inspect their risks more carefully?

A. Oh, more than that. They know all about them and, and they will not accept the general run of property.

Q. They consider the moral hazard more than you do?

A. That is the principal thing they do consider.

Q. And consider it more than you do?

A. No, not more than we do. They have means of controlling it better than any stock company could, because their members are acquainted with those whom they insure.

Q. You provide no inspection at all?

A. Oh, we do. You bet we do.

Q. Are you troubled much with over insurance?

A. I think not.

Q. Not much?

A. Not much.

Q. Then your losses occur from bad risks written?

A. Oh, no. They occur from a good many reasons. I [fol. 1606] don't know how many causes of fire we have in our classification, but a good many. Maybe by explosion; maybe by lightning; any number of causes; carelessness, perhaps as much as anything.

Q. Do you know, Mr. Buswell, that the average expense of the United States of mutual companies is a trifle over 15 per cent?

A. I don't know, no.

Q. You would think that about right, though, would you?

A. I have no idea. I think that is very low for some of them that do a very great deal of inspecting and high priced men employed to do it.

Q. Do you know, Mr. Buswell, or have you investigated to ascertain, that the expense of these reciprocal companies for this same five year period in the United States has been less than 20 per cent?

A. Was that before or after the attorney in fact takes out his 25?

Q. That is net; from 1917 to '21.

A. I don't know.

Q. What is that?

A. I don't know. I have no occasion to investigate it.

Q. Now, if the mutual companies and the reciprocal companies can hold their expenses down to less than 20 per cent, don't you think that 38 per cent for stock companies is a little high?

A. No. They do a wholly different business; entirely different class of business.

Q. Now, if you were more careful in the selection of your risks, of course you could hold your expenses down?

A. No, that would tend to increase the expense.

[fol. 1697] Q. That doesn't operate that way with the mutuals, does it?

A. I don't know.

Q. Well, it decreases their expenses, doesn't it?

A. As I said a moment ago, they are doing a selected, special class of business; limited class of business, and not a general business.

Q. You don't mean to tell me that there are not many mutuals in the United States that do a general fire business, the same as you, do you?

A. Very few; the successful ones, most successful ones, are those who do a strictly limited class.

Q. A mutual company that was doing the same class of business that you are doing, it would be a fair comparison as to their expense, wouldn't it?

A. Yes.

Q. And that would be true as to a reciprocal?

A. Yes, if there is one.

Q. Now, you know, do you not, that reciprocals necessarily—among other things that reciprocals insure lumber yards?

A. Yes.

Q. They have a big lumber business?

A. I have heard so.

Q. That is a very hazardous business, is it not, Mr. Buswell?

A. No, not necessarily.

Q. A lumber yard is not considered hazardous?

A. Oh, no. I know plenty of lumber yards that are rated 1¼, 1½ per cent.

The Referee: How do your own rates on the insurance of lumber yards compare with your insurance on other [fol. 1608] lines of risks?

A. Well, that is a hard question to answer. Rates on classes that we write will run all the way from 10 cents to 7½ per cent.

The Referee: Well, do you know your rates on lumber yards?

A. Well, they vary very greatly; depends on the location, protection, and exposure.

The Referee: Generally speaking, about what do they run?

A. Many factors enter into it. Anywhere from a retail lumber yard in a good town and good protection for about 50 to 60 cents, to a mill yard that would run up to 2½ to 3 per cent.

The Referee: Generally speaking, how would the rates on lumber yards as a class compare with the rates on dwellings as a class?

A. Very much higher.

The Referee: Why?

A. The hazard is greater.

Mr. Folonie: Which runs higher?

A. Lumber yards, as a class. Rates would be higher than dwellings, as a class.

Mr. Folonie: That is what I thought you meant, but I thought it would clarify it.

Mr. Barker:

Q. You are familiar with what is known as the underwriting activities of fire stock companies?

A. Yes.

Q. Your company was organized in 1853?

A. Yes.

Q. Have you investigated and do you know substantially the percentage of underwriting profit which your company has received on an average from 1853 up to the present time?

A. I do not.

[fol. 1669] Q. You wouldn't think it would run 2 per cent, would you?

A. It might. I don't know. I couldn't tell you.

Q. An underwriting profit of 1½ per cent for a stock fire company is a very large per cent, isn't it?

A. No, I wouldn't say it is very large, over a period of years.

The Referee: 1½ per cent of what, Mr. Buswell?

Mr. Barker:

Q. Premiums written is what I am speaking of, if he doesn't understand my question.

A. 1½ per cent underwriting profit would hardly be an inducement for capital to enter the business and take a chance on it.

Q. The question was, 1½ per cent of what?

A. Premiums, I think you said you referred to.

Q. Yes.

The Referee: Of the total premiums written?

A. Yes.

Mr. Barker: Now, Mr. Buswell, in your corporation, is it safe to say or is it not safe to say that you have paid your investors $5 from investment profit to underwriting profit of $1?

A. I can't answer that. I don't know. I haven't the figures.

Q. Well, it would run that high, don't you think, Mr. Buswell?

A. I don't think so.

Q. You have no idea about that?
A. I really have no idea.

Mr. Folonie: You asked Mr. Kurth to produce the figures for the five years. Mr. Buswell brought them this morning.

[fol. 1610] Mr. Barker: Well, I think Mr. Buswell will agree with me that I am not trying to get him to answer anything he doesn't know.

Mr. Folonie: Pardon me, I just suggested it because it might be of assistance to you, possibly.

Mr. Barker: I don't want Mr. Buswell to think I am trying to ask him anything he doesn't know.

Q. At least, is it safe to say, Mr. Buswell, that the investment end of your business has been more profitable than the underwriting end of your business?

A. I don't know. I wouldn't care to say as to that. That would be simply guessing, and I would rather not speculate.

Q. Mr. Buswell, as the vice-president of the Home Company, have you had occasion, your company, to consider the question of insurance rates at some time becoming so high that many people will carry their own risks?

A. Never has occurred to me; no; a new thought.

Q. That has never been considered in the insurance world, as far as you know?

A. Not in any general way. We know, of course, that there are people who carry their own risks now. Feel able to do it.

Q. Is that on account of the rates being so high they are practically prohibitory?

A. No, it is on account of the feeling that they have that they would rather keep the money and take the chance.

Q. Now, of course, have you considered that if the rates were reduced that those people would insure?

A. Never have considered it.

[fol. 1611] Q. Mr. Buswell, have you any acquaintance with the underwriting activities of your company with reference to writing what is ordinarily termed line insurance? For instance to chain stores, depots, and properties of railroads throughout Missouri, and filling stations of the Standard or Sinclair Oil Company or a big line of chain stores? Have you considered that?

A. Why, we do write railroad property and have for many years.

Q. Yes, sir. Now, take, for instance, a railroad like the Santa Fe, as an illustration, or the Missouri Pacific, they insure clear through the state all of their property at one lump sum, do they?

A. You are speaking specifically of those two roads? I couldn't answer.

Q. Well, any road in that class.

A. Well, usually insures its property under a schedule, listing the buildings, stations, freight houses and tanks and whatever else there is, and a specific amount on each item.

Q. And that is written from either your Chicago or your New York office?

A. No, that would be written—if we wrote it here; a railroad department.

Q. Written by the railroad department at your home office?

A. No, the policy would be countersigned in each state where the railroad property is.

Q. Now, if that insurance was written at your home office would it appear upon the receipts of that state, Mr. Buswell?

A. Yes, sir. Very carefully. Every state.

Q. How would the local agent, for instance, in a town like Springfield, Missouri, or Moberly, Missouri, know that your company had written the railroad property in that [fol. 1612] town, if you wrote it in your home office?

A. Why, probably wouldn't know. Railroad property is commonly regarded as something outside of local agency circles entirely.

Q. That is true of all chain insurance or line insurance, isn't it?

A. No.

Q. Only railroad property?

A. Only railroad property.

Q. Take for instance, the Kresge stores, or the Woolworth stores, in Missouri, they are all insured outside of the state, aren't they, Mr. Buswell?

A. I don't know.

Q. If they were insured outside of the state the local agent, of course, would know nothing about it and have nothing to do with it?

A. Well, depends on the company. If it was our agent, he would know about it.

Q. Do brokers usually have that insurance written?

A. Lines of that kind are controlled, some of them, by brokers, and some by agents. I can think now of agents of ours in Missouri—two of them, at least—who handle very large lines of that sort, extending over several states.

Q. What would those lines consist of?

A. Merchandise, usually; sometimes buildings.

Q. You mean, for instance, if Mr. Wanamaker had a chain of stores through several states he would insure them all simultaneously?

A. Yes, but not under a single policy, though.

[fol. 1613] Q. Yes, but the insurance for all of them would be gotten from one general office?

A. Quite likely, yes.

Mr. Barker: I believe that is all.

Cross-examination by Mr. Folonie:

Q. When you testified about insurance in the testimony before the Lockwood committee, respecting it being affected by a public interest, I think you said in your answer there, in substance, that you knew of the case in the Supreme Court of the United States that so stated. Did you mean by that to imply agreement on your part in the propriety of such a holding?

A. Not at all. My recollection of that is that the counsel asked me whether I was aware that the fire insurance business is impressed with a public interest, and I replied that I was aware of a decision of the Supreme Court of the United States to that effect. I think that is correct. That is the way I recall it.

The Referee: But you didn't give your endorsement to the decision?

A. I did not express an opinion on that.

Mr. Folonie:

Q. You were asked a question which seemed to me somewhat involved, when considering the question and answer

combined, as to a statement of Mr. Best, which was incorporated in the question about unearned premium reserve being half profit. Do you subscribe to any such view as that?

A. Not at all.

Q. You have been interrogated respecting mutual companies. Is the plan by which mutual companies do busi-[fol. 1614] ness the same as the plan on which stock companies operate?

A. Wholly different.

Q. In the event that a mutual company finds it has money on hand inadequate, and it has returned 10 per cent or 25 per cent or 90 per cent of the premium receipts to its policy holders and then they run into a period of excessive losses and conflagrations, do they have any recourse to get additional funds to meet those?

A. Indeed they have.

Q. What is it?

A. Every stockholder—every holder of mutual policies shares in the fortunes of the company, and he is liable for its losses.

Q. And if there is not enough money on hand, how do they get more?

A. Assesses them.

Q. Have stock companies any power to raise money beyond what thye have on hand, by assessments?

A. None at all, except they can assess their stockholders.

Q. And that is a voluntary act of the stockholders, in that case?

A. Yes.

Q. I mean you haven't any power to impose assessments on them if they do not choose to pay it?

A. No, there is no liability we can enforce.

Q. If you can convince the stockholders it is to their interest to put in more, that is for them to put it in or not?

A. Exactly. And we have done it.

Q. And as far as mutuals are concerned, when they get into that situation they can make them pay in whether they like it or not?

A. They can.

[fol. 1615] Q. Do these mutual companies work on the agency plan of having agents to whom they pay 20 and

25 per cent commissions for securing their business, the agency plan that the stock companies use?

A. Some of them may but I don't think so; certainly, the majority of them do not.

Q. So that the method of doing business, as far as the acquisition of the business is concerned—and I am not speaking now of exceptional cases that may exist—but in general, their method of acquiring the business through the means of agents operating on commissions differs radically from your position in that particular?

A. Entirely. They do not as a rule incur that expense.

Q. There are some so-called mutual companies who operate on both the mutual and the stock plan, are there not—write policies on both plans?

A. There are mutual companies who issue what are called non-assessable policies, and I can think of two doing a general business.

Q. To speak of them in general, without those exceptions, those who do business on the strictly mutual plan, they do not operate upon the theory of accumulating a reserve for the purpose of meeting contingencies, but have that cared for by assessments they may levy in case of necessity?

A. Yes. Their dividends distribute a part of their earnings for the recently expired period, but they always maintain some reserve to take care of losses.

[fol. 1616] Q. In other words, they take care of what comes along normally; they are able to take care of it usually out of their reserve; and if they run into an abnormal period they get it by assessment?

A. Yes.

Q. Do—not to mention possible exceptions, but as a general proposition—do mutual companies write insurance on dwellings, like stock companies do?

A. There are some local mutuals that do that. Not a strictly local one, though.

Q. For instance, county mutuals and companies of that kind?

A. Yes.

Q. I am talking about the mutuals who do a nation wide business; is that part of their general activities?

A. No. Mutuals who do that class of business, I think, are invariably local; confined to one or maybe a half a dozen counties.

Q. And those mutuals who undertake to do a nation-wide business are usually confined to one class of activity? For example, one will take flour mills and another will take lumber yards and so forth?

A. Yes, that is true.

Q. Inquiry was made of you about the method of writing such business as railroads, for example. If a policy is issued in the regular course by your company on a railroad running through three states, do you write a policy in each state applicable to the part of the property in that state?

A. I am not sure whether that is done—it is in some states where the law requires that.

[fol. 1617] Q. But in some states you write what is called a master policy and then subsidiary policies in each state?

A. Yes.

Q. In other words, one policy at the home office for the whole amount and then divide it into parts according to states and then write subsidiary policies the total of which is the same as the master policy?

A. Yes, in some states.

Q. The purpose of doing that is to give to each state that part of the principal policy which belongs to that particular state?

A. Yes. And the taxes on premiums are apportioned very carefully. That is a subject that is frequently looked into by state insurance departments.

Q. Now, when Mr. Kurth was on the stand he was asked to produce some information, and you have produced here the 1921 annual statement of the Home Insurance Company, showing all the operations of the company except those pages, like page 9, which relate to the business of a particular state. Is that correct?

A. Yes. I think this is a copy of—a complete copy, with the exception of that information. Yes, it is all here.

Q. So that this return is made identically to every state in which you do business, except that those pages relating to particular states, for instance, page 9, here, will be filled out in each state so far as the facts of that particular state are concerned?

A. Yes.

Q. On pages 2 and 3 you have a statement of the capital stock, the income and the disbursements, of your company at large, have you not?

A. Yes.

[fol. 1618] Q. And on page 4 the ledger assets and on page 5 the liabilities?

A. Correct.

Q. And on page 6 the risks and premiums on all business effective on and after January 1, 1921?

A. By classes; yes, sir.

Q. And page 7, "recapitulation of fire risks and premiums on all business effective on and after January 1, 1921, and on perpetual risks whenever written"?

A. Yes, sir.

Q. "Recapitulation of Gross Premiums on all Unexpired Risks, other than Fire Risks, Effective on and After January 1, 1921," and "Recapitulation of Risks and Premiums on all Business Effective Prior to January 1, 1921."

A. Correct.

Q. Page 8, answers to "General Interrogatories" propounded by commissioners?

A. Yes.

Q. And page 9 is left blank in this one and would be filled out in each state as the facts in that state required. Page 10, entitled "Underwriting and Investment Exhibit, Showing the Sources of the Increase and Decrease in Surplus During 1921"?

A. Right.

Q. And does that give an analysis of your business, how it is made up and what the increase and decrease during that year has arisen?

Q. And page 11 shows—page 10 also shows how the premium item is made up, the underwriting profit and loss item and losses and underwriting expense?

A. Yes.

[fol. 1619] Q. Page 11 is styled "investment exhibit" and shows interest and rents and profits on investments, investment income earned during 1921, losses on investments during 1921, investments expenses incurred during 1921, investment losses and expenses during 1921, and miscellaneous information, including dividend information?

A. Correct.

Q. At page 12 appears a deposit schedule, a special deposit schedule, in the first subdivision; second schedule, all other deposits. Schedule E, showing "name and location of company, and amount recoverable for reinsurance on paid and unpaid losses"?

A. Right.

Q. Schedule D, part 1, "showing all bonds owned by the company December 31, 1921"?

A. It does.

Q. And they are divided here into classes, whether Government, state, provincial, county, municipal, railroad, miscellaneous and Canada?

A. Those are bonds. Yes.

Q. This also shows the interest rate upon such securities, how paid, the year of maturity, the book value, par value, rate used to obtain market value, maket value (excluding accrued interest), actual cost (excluding accrued interest), the interest thereon, being the amount due and accrued December 31, 1921, and the gross amount received during 1921. Those items of information all appear here in detail, do they not?

A. They are all there.

Q. Schedule D, part 2, shows all the stocks owned by the company December 31, 1921, does it not?

A. It does.

[fol. 1620] Q. That is divided into "railroad," "bank and trust," and "miscellaneous?"

A. Yes.

Q. And that shows as to—they are all listed by the name of the company whose securities are listed?

A. They are.

Q. Shows the book value, par value, the rate per cent used to obtain market value, the market value of each, the actual cost to your company, the dividend rate in each of the last three years, 1919, 1920 and 1921, the amount received during 1921, upon each?

A. It does.

Q. Schedule D, part—on the back of it is a summary dividing it into classes: Government; state, province, county and municipal; railroad; miscellaneous bonds, and the total and then comes, divided between railroad, bank and trust company and miscellaneous, and total, of stock; and then the total of stocks and bonds?

The Referee: On the back of what?

Mr. Folonie: On the back of that same Schedule D. In other words, what appears on the back of Schedule D and entitled "Summary" summarizes in a group what appears in detail immediately preceding it; is that correct?

A. Right.

Q. Schedule D, part 3, here attached, shows all the bonds and stocks acquired during 1921, giving the name of the company, shares, number of shares of each block of stock, the full name of the security, the rate of interest, and date of maturity and date of acquirement, the name of the vendor, the cost to the company and book value, the par value, the [fol. 1621] paid for accrued interest on bonds acquired during 1921?

A. Correct. Here is the same thing on this—no—these are sub.

Q. Now, Schedule D shows all the bonds and stocks sold, redeemed or otherwise disposed of during 1921, containing a complete description of them, the date when sold, the name of the purchaser, the consideration, excluding accrued interest on bonds, par value, the cost to the company and book value at the date of sale, the profit on sale, the loss on sale, and the interest and dividends received during 1921, including accrued interest on bonds sold?

A. Right.

Q. And on Schedule X is a list of the "unlisted assets" of your company, showing "all property owned by the company, or in which it had any interest, on the 31st day of December, 1921, which is not entered on any other schedule and not anywhere in the financial statement for the year 1921," giving the description, from whom acquired, the date acquired, the date when charged off from statement, the par value, the actual cost, the book value when charged off, the market value December 31, 1921, gross income therefrom during 1921, and the totals of each of those columns?

A. That is correct.

Q. Schedule N is a list, is it not, showing the balance, "all balances, (according to company's records) carried in each bank or trust company on the last day of each month of the year 1921," giving the name of the bank or trust company and the amount in dollars and cents as of the last day of each month of the year, the rate of interest received from

each of such banks and trust companies, and the amount [fol. 1622] of interest in dollars and cents received during 1921 from each?

A. Correct.

Q. Now, these reports are duplicated by some duplicating process as to all parts that are filled in here, so that the specific filling in as to each particular state is all that need hereafter be done to make it a complete blank?

A. That is correct; copy of that is on file in the Missouri Insurance Department.

Q. And a copy of all that appears here is on file in the Insurance Department of every state of the United States, is it not?

A. Every state in which we do business.

Mr. Folonie: We offer this paper in evidence.

Mr. Barker: Of course, Mr. Folonie, I didn't call for that.

Mr. Folonie: You asked for many of these things. You asked for the list of all the investments and profits and losses, and you asked for the gains and losses on the investments and all those things in detail, and this was the form in which we have it for production.

Mr. Barker: I want to repudiate asking for that, because we have that in Missouri, and it doesn't serve any purpose at all, and that wasn't in any sense what I intended to ask the witness for; but if you want to offer it as yours, I don't care for it.

Mr. Folonie: I will offer it as ours. I don't intend to bind you in the sense that it is your offer rather than mine.

Mr. Barker: We have them all in Missouri, but if you want it in the record I have no objection. Encumbers it up, pretty big.

[fol. 1623] Mr. Folonie: All right.

(Whereupon the document so referred to, having been offered and received in evidence, was at the time by the reporter duly marked "Plaintiffs' Exhibit No. 802, Blume," and is in words and figures as follows, to wit:)

Annual Statement for the Year Ending December 31, 1921, of the Condition and Affairs of *the* The Home Insurance Company, Organized under the Laws of the State of New York, Made to the Superintendent of Insurance of the State of ——, Pursuant to the Laws Thereof

Incorporated April, 1853. Commenced Business April 13th, 1853

Home Office, No. 56 Cedar Street, New York, N. Y.
(Street and Number) (City or Town and State)

Officers

President, Elbridge G. Snow.
Secretary, Wilfred Kurth.
Treasurer, ——.

Vice-Presidents { Frederic C. Buswell. / Clarence A. Ludlum. / Charles L. Tyner. / Wilfred Kurth.

Directors or Trustees

Elbridge G. Snow.	William D. Baldwin.	Thomas B. Kent.
Henry F. Noyes.	Lewis L. Clarke.	Cornelius N. Bliss, Jr.
Lucien C. Warner.	Clarence H. Kelsey.	Frederic C. Buswell.
John Claflin.	William Ives Washburn.	William S. Gray.
John H. Flagler.	Elbert H. Gary.	Charles L. Tyner.

[fol. 1625]

I—Capital Stock

1. Amount of capital paid up	$12,000,000	
2. Amount of ledger assets (as per balance), December 31 of previous year		$65,675,583.05
3. Increase of paid up capital during the year		6,000,000.00
4.		
Extended at...		$71,675,583.05

Stock Fire, and Marine Companies—Continued

II—Income

	(1) *Gross premiums written and received during the year per lines 2, 10, 18, 26, 34 and 42, VI, page 6, and 38, page 7	(2) Deduct: Reinsurance premiums	(3) Deduct: Return premiums on policies canceled	(4) Total deductions	(5) Net premiums	
5. Fire	$48,500,424 74	$8,786,545 18	$8,489,015 63	$17,275,560 81	$31,224,863 93	
6. Ocean marine	1,760,560 75	408,436 06	117,299 58	525,735 64	1,234,765 11	
7. Motor vehicles	7,722,167 76	1,372,510 05	1,799,032 32	3,171,542 37	4,550,625 39	
8. Aircraft	63,291 13	450 84	35,945 67	36,396 51	26,894 62	
9. Inland navigation and transportation	1,739,698 16	347,670 00	179,063 17	526,733 17	1,212,964 99	
10. Tornado, windstorm and cyclone	1,913,795 00	83,644 00	450,840 00	534,480 00	1,379,275 00	
11. Hail	2,053,510 33	7,018 05	10,312 41	17,330 46	2,402,179 87	
12. Sprinkler leakage	258,357 42	78,471 71	50,184 70	128,656 43	129,700 99	
13. Riot, civil commotion and explosion	335,740 29	67,152 64	156,344 77	223,497 41	112,242 88	
All other (a)						
14. Rain and flood	274,000 56	52,809 16	18,841 24	71,710 40	202,290 16	
15. Crop insurance	17,372 35		114 55	114 55	17,257 80	
16. Earthquake	14,994 92	143 94	7,377 27	7,377 27	7,473 71	
17. Totals	$64,653,812 51	$11,204,941 65	$11,314,457 31	$22,519,398 96	$42,134,513 55	$42,134,513 55
18. Deposit premiums written on perpetual risks (gross)						
19. Gross interest on mortgage loans, per Schedule B, less $ ..... accrued interest on mortgages acquired during 1971						
20. Gross interest on collateral loans, per Schedule C						

21.	Gross interest on bonds and dividends on stocks, less $270,329.62 accrued interest on bonds acquired during 1921, per Schedule D	$3,155,154.21	
22.	Gross interest on deposits in trust companies and banks, per Schedule N	120,157.27	
23.	Gross interest from all other sources (give items and amounts):		
24.	Bills receivable	7,078.20	
25.	Branch offices—temporary bank balance	1,971.30	
26.	Gross rents from company's property, including $..... for company's occupancy of its own buildings, less $..... interest on incumbrances, per Schedule A	.....	
27.	Total interest and rents		3,284,390.98
28.	From other sources (give items and amounts):		
29.	Unlisted securities	$1,500.48	
30.	Profit and loss items	140.00	
31.	Surplus paid in by stockholders	3,000,000.00	
32.	Increase in liabilities during the year on account of reinsurance treaties		3,001,640.48 .....
33.	Remittances from Home Office to United States Branch (gross)		.....
34.	Borrowed money (gross)*		.....
35.	From agents' balances previously charged off		.....
36.	Gross profit on sale or maturity of ledger assets, viz.:		
	(a) Real estate, per Schedule A	.....	
	(b) Bonds, per Schedule D	152,224.14	
	(c) Stocks, per Schedule D	49,137.50	
			201,361.64
37.	Gross increase by adjustment in book value of ledger assets, viz.:		
	(a) Real estate, per Schedule A	.....	
	(b) Bonds, per Schedule D	.....	
	(c) Stocks, per Schedule D	.....	
38.	Total Income		48,621,876.65
39.	Amount carried forward		120,297,459.70

* By gross premiums is meant the aggregate of all the premiums written in the policies or renewals. Are they so returned in this statement? Answer. Yes.

* Company is at liberty to state transactions briefly, so that explanation can be carried as footnote in department report.

Stock, Fire, and Marine Companies—Continued

[fol. 1626]

Amount brought forward $120,297,459.70

III—Disbursements

	(1)	(2) Deduct	(3) Deduct	(4)	(5)	
	Gross amount paid for losses, less discounts, if any	Reinsurance	Salvage	Total deduction	Net amount paid policyholders for losses	
1. Fire	$23,193,109.71	$4,482,480.85	$427,521.34	$4,910,011.19	$18,283,098.52	
2. Ocean marine	2,059,492.92	698,025.39	60,000.89	758,033.28	1,301,459.64	
3. Motor vehicles	4,134,938.34	1,066,071.16	97,847.07	1,162,918.23	3,032,020.11	
4. Aircraft	57,235.28	.....	157.50	157.50	57,077.78	
5. Inland navigation and transportation	1,317,589.36	479,071.66	83,280.11	562,351.77	755,237.59	
6. Tornado, windstorm and cyclone	443,600.81	15,944.70	291.97	16,148.67	427,452.14	
7. Hail	1,639,307.35	.....	4,763.60	4,763.60	1,634,543.75	
8. Sprinkler leakage	69,223.29	19,564.51	640.72	20,105.25	49,118.04	
9. Riot, civil commotion and explosion	15,997.41	4,056.24	.....	4,056.24	11,941.17	
All other, viz:						
10. Rain and flood	234,666.53	46,789.86	.....	46,789.86	187,876.67	
11. Crop investment	56,518.64	.....	.....	.....	56,518.64	
12. Earthquake	4,128.47	796.10	.....	796.10	3,332.37	
13. Totals	$33,225,808.11	$6,751,760.49	$674,381.20	$7,426,131.69	$25,799,676.42	$25,799,676.42
14. (Amount paid for losses incurred in previous years included in item 13, column 1, $5,454,091.26.)						
15. Loss adjustment expenses						912,534.49
16. Agents' compensation, including brokerage					$10,063,961.87	
17. Agents' allowances					173,976.95	10,237,938.82

18. Field supervisory expenses:			
(a) Salaries of field men		$911,126.78	
(b) Expenses of field men		545,245.82	
(c) Executive—traveling expenses of others than field men		15,286.82	1,471,659.42
19. Salaries and fees—directors, officers and clerks			1,641,849.67
20. Rents, including $ for rent only for company's occupancy of buildings owned			295,735.22
21. Furniture and fixtures, including rent of and repairs to same			102,170.33
22. Maps, including corrections			24,205.08
23. Inspections and surveys, including underwriters' boards and tariff associations			573,818.16
24. Federal taxes			308,444.19
25. Taxes, licenses and fees:			
(a) State, county and municipal		$1,087,386.03	
(b) Insurance department		112,234.19	
(c) Fire department			
(d) Fire patrol and salvage corps			
(e) All other taxes, licenses and fees (except on real estate)			1,199,692.22
26. Postage, telegraph and telephone, exchange and express			
27. Legal expenses, excluding legal expenses on losses			28,305.48
28. Advertising and subscriptions, $334,308.65; printing and stationery, $442,788.99			7,771,157.64
29. Miscellaneous, itemized, (a)		$	
(b) United States Salvage Association Stock		200.00	
(c) Pacific Coast Adjustment Bureau Stock		100.00	
(d) (Above not in assets)			300.00
30. Deposit premiums returned on perpetual risks			
31. Remittances to Home Office by United States branch (gross)			
32. Borrowed money repaid (gross)			
33. Interest on borrowed money			
34. Real estate expenses:			
(a) Repairs and expenses		$	
(b) Taxes			
35. Paid stockholders for dividends (amount declared during the year, cash, $2,250,000; stock, $—)			2,250,000.00
36. Scrip or certificates of proofs redeemed in cash, $—; interest paid to scripholders, $—			
37. Decrease in liabilities during the year on account of reinsurance treaties			78,821.47

Stock, Fire, and Marine Companies—Continued

38.	Agents' balances charged off		1,525.13
39.	Gross loss on sale or maturity of ledger assets, viz.:		
	(a) Real estate, per Schedule A	$.....	
	(b) Bonds, per Schedule D	542,505.93	
	(c) Stocks, per Schedule D	691,101.25	1,233,607.18
40.	Gross decrease, by adjustment, in book value of ledger assets, viz.:		
	(a) Real estate, per Schedule A	$.....	
	(b) Bonds, per Schedule D	.....	
	(c) Stocks, per Schedule D	.....	.....
41.	Total Disbursements		$40,921,143.95
42.	Balance		$73,376,315.75

[fol. 1927]

IV.—Ledger Assets

1.	Book value of real estate (less $— incumbrances), per Schedule A	$.....	
2.	Mortgage loans on real estate, per Schedule B, first liens, $—	.....	
3.	Loans secured by pledge of bonds, stocks or other collateral, per Schedule C	.....	
4.	Book value of bonds, $46,170,733.01, and stocks $15,456,280.16, per Schedule D	61,587,013.17	
5.	Cash in company's office	$.....	
6.	Deposits in trust companies and banks not on interest, per Schedule N	.....	
7.	Deposits in trust companies and banks on interest, per Schedule N	4,880,674.55	4,880,674.55
8.	(a) Agents' balances representing business written subsequent to October 1, 1921	5,926,852.56	
9.	(b) Agents' balances representing business written prior to October 1, 1921	952,262.84	
10.	Bills receivable, taken for fire risks	19,512.63	
11.	Bills receivable, taken for risks other than fire	.....	
12.	Other ledger assets, viz	.....	
13.	.....	.....	
14.	.....	.....	
15.	.....	.....	
16.	Total Ledger Assets, as per balance on page 3		$73,376,315.75

Non-Ledger Assets

17.	Interest due, $— and accrued, $— on mortgage, per Schedule B	$.....	
18.	Interest due, $— and accrued, $694,866, on bonds, per Schedule D, Part 1	694,866.00	
19.	Interest due, $— and accrued, $— on collateral Loans, per Schedule C, Part 1	.....	
20.	Interest due, $— and accrued, $— on other assets (give items and amounts)	.....	
21.	.....	.....	
22.	.....	.....	
23.	Rents due, $— and accrued, $— on company's property or lease	$.....	
24.	Total	.....	
25.	Market value of real estate over book value per Schedule A	.....	694,866.00
26.	Market value (not including interest in item 18) of bonds and stocks over book value per Schedule D	.....	2,027,906.40
27.	Other non-ledger assets, viz.:	.....	.....
28.	Recoverable for Reinsurance on paid losses	.....	804,179.00
29.	.....	.....	.....
30.	Gross Assets	.....	$76,903,327.15

Deduct Assets not Admitted

31.	Company's stock owned, $—; loans on, $—	$.....	
32.	Supplies, printed matter, and stationery	.....	
33.	Furniture, fixtures and safes	.....	
34.	Agents' balances representing business written prior to October 1, 1921	952,262.84	
35.	Bills receivable, past due, taken for premiums	19,512.63	
36.	Excess of bills receivable, not past due taken for risks over the unearned premiums thereon	.....	
37.	Loans on personal security, endorsed or not	.....	
38.	Overdue and accrued interest on bonds in default	.....	
39.	Book value of real estate over market value, per Schedule A	.....	
40.	Book value of bonds and stocks over market value, per Schedule D	.....	
41.	Book value of other ledger assets over market value, viz.:	.....	
42.	.....	.....	971,775.47
43.	Total Admitted Assets	.....	$75,931,551.68

(a) Agency and home office premiums not over three months due less reinsurance, return premiums, commissions and agents' credit balances. No other items to be included.

(b) Agency and home office premiums over three months due less reinsurance, return premiums and commissions. No other items to be included.

Stock, Fire, and Marine Companies—Continued

[fol 1628]

V Liabilities

	1. Losses and claims	(1) Adjusted	(2) Reported on page —, adjustment	(3) Returned but not required	(4) Restated	(5) Total	(6) Deduct reinsurance per Schedule E, columns (2) and (4)*	(7) Net unpaid claims	
2.	Fire	$708,080	$4,005,746	$	$204,468	$4,918,913	$1,064,036	$3,854,883	
3.	Ocean marine	50,092	1,111,632		40,865	1,202,089	316,388	885,291	
4.	Motor vehicles	126,178	104,557		47,789	958,524	272,056	686,468	
5.	Aircraft	1,185	5,025		6,000	12,710		12,710	
6.	Inland navigation and transportation	35,521.23	752,282		21,400	809,203.23	277,207	531,996.23	
7.	Tornado, windstorm and cyclone	5,947	96,019			101,966		101,966	
8.	Hail	1,951			1,000	2,951		2,951	
9.	Sprinkler leakage	1,147	11,900			13,047	5,959	7,088	
10.	Riot, civil commotion and explosion		6,762			6,762		6,762	
	All other, viz.:								
11.	Rain	106	31,978			32,144		32,144	
12.	Crop Investment	1,268				1,268		1,268	
13.	All Classes		500,000	500,000		500,000		500,000	
14.	Totals	$882,154.23	$6,806,401	$500,000	$321,622	$8,549,177.23	$1,935,650	$6,625,127.23	$6,625,127.23

15. Estimated expenses of investigation and adjustment of losses (paid losses, $—; unpaid losses, $—).

16. *Gross premiums (less reinsurance) received and receivable upon all unexpired fire risks effective on and after January 1, 1921, $32,455,001.00; unearned premiums thereon, per recapitulation, page 7, item 18, column 6 ..... $20,062,195.00

17. *Gross premiums (less reinsurance) received and receivable upon all unexpired risks, other than fire risks, effective on and after January 1, 1921, $6,001,615.00; unearned premiums thereon per recapitulation, page 7, item 7, column 7 ..... 3,097,942.00

18. *Gross premiums (less reinsurance) received and receivable upon all unexpired risks effective prior to January 1, 1921, $28,066,138.00; unearned premiums thereon, per recapitulation, page 7, item 51, column 6	10,580,643.00	
19. Total unearned premiums as computed above		34,250,780.00
20. Amount reclaimable by the insured on perpetual fire insurance policy being — per cent of the premium or deposit received		
21. Net premium reserve and all other liabilities, except capital, under the life insurance or any other special department		
22. Unused balances of bills and notes included in admitted assets, taken in advance of premiums on open marine and inland policies or otherwise, returnable on settlement not included in items 16, 17 and 18 above		
23. Principal unpaid on scrip of certificates of profits authorized or ordered to be redeemed		
24. Interest due or accrued, including $— on borrowed money		
25. Dividends declared and unpaid to stockholders $—, to policyholders, $—		
26. Salaries, rents, expenses, bills, accounts, fees, etc., due or accrued		
27. Estimated amount hereafter payable for federal, state and other taxes based upon the business of the year of this statement		200,000.00
28. Contingent commissions or other charges due or accrued		1,000,000.00
29. Funds held under reinsurance treaties. Unpaid Reinsurance Premiums		891,476.14
30. Due and to become due for borrowed money		
31. All other liabilities, viz		
32.		
33.		
34. Total Amount of All Liabilities, Except Capital		$42,967,383.37
35. Capital paid up	$12,000,000.00	
36. Surplus over all liabilities	20,964,168.31	
37. Surplus as regards policyholders		32,964,168.31
38. Total		$75,931,551.68
39. Amount of such surplus which constitutes a permanent reserve fund represented by scrip which by the terms of its issue cannot be redeemed so as to diminish said reserve (carried inside), $—.		

*By gross premiums is meant the aggregate of all the premiums written in the policies or renewals. Are they so returned in this statement? Answer, Yes.

Stock, Fire, and Marine Companies—Continued

[Ed. 1929] VII.—Recapitulation of Fire Risks and Premiums on all Business Effective on and After January 1, 1921, and on Perpetual Risks Whenever Written

	(1) Year written	(2) Term	(3) Amount covered, less reinsurance Dollars	(4) *Gross premiums charged less reinsurance Dollars Cts.	(5) *Fraction unearned	(6) Amount of premiums unearned Dollars Cts.
1	1921	One year or less	2,136,426,253	21,263,160.00	½	10,646,580.00
2	1920	Two years	.....	.....	¼	.....
3	1921		14,629,945	101,682.00	¾	76,262.00
4	1919		.....	.....	1/6	.....
5	1920	Three years	.....	.....	⅓	.....
6	1921		898,292,437	8,862,507.00	5/6	7,385,423.00
7	1918		.....	.....	⅛	.....
8	1919		.....	.....	2/8	.....
9	1920	Four years	.....	.....	⅜	.....
10	1921		1,822,865	16,716.00	¾	14,627.00
11	1917		.....	.....	1/10	.....
12	1918		.....	.....	3/10	.....
13	1919	Five years	.....	.....	½	.....
14	1920		.....	.....	7/10	.....
15	1921		174,492,247	2,115,064.00	9/10	1,903,558.00
16	.....	Over five years	6,031,400	62,952.00	Pro rata	32,735.00
17	.....	Advance prems.	534,644	3,010.00	100%	3,010.00
18	.....	Totals	3,232,329,791	32,455,091.00	.....	20,062,195.00
19	.....	Perpetual risks	None	None	.....	None
20	.....	Grand Totals	3,232,329,791	32,455,091.00	.....	20,062,195.00

VIII.—Recapitulation of *Gross Premiums on all Unexpired Risks, Other than Fire Risks, Effective on and After January 1, 1921

	Running one year or less from date of policy		Running more than one year from date of policy				
	*Gross premiums less reinsurance	†Amount unearned	*Gross premiums less reinsurance	Amount unearned (pro rata)	Advance premiums (100 per cent)	Total premiums per lines 8, 16, 24, 32, 40, 48, page 6	Total unearned premiums
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
21. Ocean marine	$563,831.00	$563,831.00	.....	.....	.....	$563,831.00	$563,831.00
22. Motor vehicles	3,597,490.00	1,798,745.00	$7,744.00	$6,453.00	.....	3,605,234.00	1,805,198.00
23. Aircraft	9,322.00	4,061.00	.....	.....	.....	9,322.00	4,061.00
24. Inland navigation and transportation	593,182.00	296,591.00	.....	.....	.....	593,182.00	296,591.00
25. Tornado, windstorm and cyclone	354,496.00	177,248.00	721,000.00	613,711.00	$187.00	1,075,743.00	791,146.00
26. Hail	.....	.....	.....	.....	.....	.....	.....
27. Sprinkler leakage	69,216.00	34,908.00	60,461.00	50,516.00	.....	129,677.00	85,124.00
28. Riot, civil commotion and explosion	98,468.00	48,434.00	11,138.00	9,291.00	.....	107,606.00	57,525.00
29. Earthquake	1,920.00	960.00	1,011.00	861.00	.....	2,931.00	1,821.00
30.	4,089.00	2,045.00	.....	.....	.....	4,089.00	2,045.00
31. Totals	$5,290,014.00	$2,926,923.00	$801,414.00	$680,832.00	$187.00	$6,091,615.00	$3,607,942.00

Stock, Fire, and Marine Companies—Continued

IX.—Risks and Premiums on all Business Effective Prior to January 1, 1921

(Excluding Perpetual Risks)

		Risks Dollars	*Gross premiums thereon Dollars	Cts.
32.	In force on the 31st day of December, 1920, as per line 6, page 6 of last year's statement	7,638,852,900	77,344,028	.00
33.	Written or renewed during the year	* * *	* * *	
34.	Excess of original premiums over amount received for reinsurance			
35.	Totals	7,638,852,900	77,344,028	.00
36.	Deduct those expired and marked off as terminated	4,594,800,028	45,676,891	.00
37.	In force at the end of the year	3,044,052,881	31,667,137	.00
38.	Deduct amount reinsured (schedule required)	281,897,350	3,660,999	.00
39.	Net amount in force	2,762,155,531	28,006,138	.00

X.—Recapitulation of Risks and Premiums on all Business Effective Prior to January 1, 1921

(Excluding Perpetual Risks)

(1)	(2)	(3)	(4)	(5)	(6)
Year written	Term	Amount covered, less reinsurance Dollars	*Gross premiums charged less reinsurance Dollars Cts.	*Fraction unearned	Amount of premiums unearned Dollars Cts.
40. 1920	Two years	18,632,560	106,054.00	½	26,514.00
41. 1919	Three years	881,214,924	8,021,442.00	1/6	1,436,907.00
42. 1920		1,067,722,714	9,059,246.00	½	4,849,623.00
43. 1918	Four years	5,881,297	79,614.00	⅛	9,952.00
44. 1919		5,260,769	46,528.00	⅜	15,198.00
45. 1920		2,952,479	26,381.00	⅝	16,488.00
46. 1917	Five years	154,116,570	1,896,765.00	1/10	189,677.00
47. 1918		163,338,739	1,964,755.00	3/10	589,427.00
48. 1919		183,207,084	2,316,268.00	½	1,158,134.00
49. 1920		261,108,761	3,138,219.00	7/10	2,196,755.00
50.	Over five years	18,680,634	176,866.00	Pro rata	91,970.00
51.	Totals	2,762,155,531	28,096,138.00		10,580,643.00

*By gross premiums is meant the aggregate of all the premiums written in the policies or renewals. Are they so returned in this statement? Answer, Yes.

*In case the fractions unearned as printed in this column do not produce the requisite statutory reserve, such fractions shall be disregarded and reserve extended in accordance with the statutory requirement.

†State here basis of computation used in each case Ocean 100%, Aircraft, Inland 50%, Auto., Tornado, Sprinkler Leakage, Riot & Civil Commotion, Explosion, Earthquake, Rain, Flood pro rata.

Stock Fire, and Marine Companies—Continued

[fol. 1629]

Business in the State of —— During 1921

Risks Written

(1) Class	(2) Gross risks written	(3) Deduct: Risks canceled	(4) Deduct: Reinsurance in companies authorized in	(5) Total deductions column 3, plus column 4	(6) Net risks written column 2, minus column 5
1 Fire	$	$	$	$	$
2 Ocean marine					
3 Motor vehicles					
4 Aircraft					
5 Inland navigation and transportation					
6 Tornado, windstorm and cyclone					
7 Hail					
8 Sprinkler leakage					
9 Riot, civil commotion and explosion					
10 All other, viz.:					
11					
12					
13 Totals	$	$	$	$	$

Premiums Received

	(1) Class	(2) Gross premiums on risks written	(3) Deduct: Return premiums	(4) Deduct: Premiums for reinsurance in companies authorized in	(5) Total deductions column 3, plus column 4	(6) Net premiums received column 2, minus column 5
14.	Fire	$.....	$.....	$.....	$.....	$.....
15.	Ocean marine	.....	.....	.....	.....	.....
16.	Motor vehicles	.....	.....	.....	.....	.....
17.	Aircraft	.....	.....	.....	.....	.....
18.	Inland navigation and transportation	.....	.....	.....	.....	.....
19.	Tornado, windstorm and cyclone	.....	.....	.....	.....	.....
20.	Hail	.....	.....	.....	.....	.....
21.	Sprinkler leakage	.....	.....	.....	.....	.....
22.	Riot, civil commotion and explosion	.....	.....	.....	.....	.....
23.	All other, viz.	.....	.....	.....	.....	.....
24.	.....	.....	.....	.....	.....	.....
25.	.....	.....	.....	.....	.....	.....
26.	Totals	$.....	$.....	$.....	$.....	$.....

Stock, Fire, and Marine Companies—Continued

Losses Paid and Losses Incurred

(1) Class	(2) Losses paid (deducting salvage)	(3) Deduct losses on risks reinsured in companies authorized in	(4) Net losses paid column 2, minus column 3	(5) Losses Incurred	(6) Deduct losses on risks reinsured in companies authorized in	(7) Net losses incurred column 5, minus column 6
27. Fire	$	$	$	$	$	$
28. Ocean marine						
29. Motor vehicles						
30. Aircraft						
31. Inland navigation and transportation						
32. Tornado, windstorm and cyclone						
33. Hail						
34. Sprinkler leakage						
35. Riot, civil commotion and explosion						
36. All other, viz.:						
37.						
38.						
39. Totals	$	$	$	$	$	$

State of New York,
County of New York, ss:

F. C. Buswell Vice President, Wilfred Kurth Secretary, ——— *Treasurer of the The Home Insurance Co, being duly sworn, each for himself, deposes and says that they are the above described officers of the said company, and that on the thirty-first day of December last, all the above described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations therein contained, annexed or referred to are a full and correct exhibit of all the assets, liabilities, income and disbursements, and of the condition and affairs of the said company on the said thirty first day of December last, and for the year ending on that date, according to the best of their information, knowledge and belief, respectively.

——— ———, Vice President. ——— ———, Secretary. ——— ———, *Treasurer.

Subscribed and sworn to before me this — day of ———, 1922.

———,

*Or corresponding person having charge of the accounts and finances of the company.

[fol. 1621]

Underwriting and Investment Exhibit

Showing the Sources of the Increase and Decrease in Surplus During 1921

Underwriting Exhibit

			Gain in surplus	Loss in surplus
Premiums				
1. Total Premiums per items 17 and 18 page 2, $42,134,513.55 less $... per item 30, page 3	$42,134,513.55		.....	.....
2. Add Unearned Premiums Dec. 31, 1920, per item 4, of last year's exhibit	35,050,318.00		.....	.....
3. Total	$77,184,831.55		.....	.....
4. Deduct Unearned Premiums Dec. 31, 1921, per item 19, and $... reclaimable on perpetual insurance, per item 20, page 3	34,250,780.00		.....	.....
5. Premiums Earned during 1921		42,934,051.55	.....	.....
Underwriting Profit and Loss Items				
6. Gain from Agents' Balances previously charged off, per item 35, page 2, $... and from other underwriting income, $... per Income Exhibit, page 2 (a)	$.....		.....	.....
7. Loss from Agents' Balances charged off $1,525.13 and from other underwriting disbursements, $... per Disbursement Exhibit, page 3, other than losses and expenses per items 14 and 23 of this exhibit (a)	1,525.13		.....	.....
8. (b) Loss from items 6 and 7	$1,525.13		.....	.....
9. Agents' Balances and Bills Receivable Not Admitted Dec. 31, 1920, per item 10 of last year's exhibit, $820,761.94	.....		.....	.....

Stock, Fire, and Marine Companies—Continued

				Gain in surplus	Loss in surplus
10. Agents' Balances and Bills Receivable Not Admitted Dec. 31, 1921, per items 34, 35, and 36, page 4, $971,775.47					
11. (b) Loss from items 9 and 10	281,273.53				
12. (b) Loss from Underwriting Profit and Loss Items		282,708.06			
13. Underwriting Income Earned During 1921			$42,051,252.89		
Losses					
14. Losses paid, per item 13, page 3	$25,799,076.42				
15. Deduct Salvage and Reinsurance Recoverable Dec. 31, 1921, per items (a) 28, page 4	804,179.00				
16. Balance	$24,995,497.42				
17. Add Salvage and Reinsurance Recoverable Dec. 31, 1920, per item 15 of last year's exhibit	469,652.00				
18. Total	$25,465,149.42				
19. Deduct Unpaid Losses Dec. 31, 1920, per item 21 of last year's exhibit	6,342,779.00				
20. Balance	$19,112,370.42				
21. Add Unpaid Losses Dec. 31, 1921, per item 14 page 3	6,625,127.23				
22. Losses incurred during 1921			$25,737,497.65		
Underwriting Expenses					
23. (c) Underwriting Expenses paid during 1921 per Disbursement Exhibit, page 3	$7,484,325.40				

24. (a) Deduct Underwriting Expenses unpaid Dec. 31, 1920, per item 27 of last year's exhibit....	1,200,000.00				
25. Balance	$6,284,525.40				
26. (a) Add Underwriting Expenses unpaid Dec. 31, 1921, per Liability Exhibit, page 3, viz.: Items 26 & 27	1,200,000.00				
27. Underwriting Expenses Incurred during 1921		7,484,525.40			
28. Underwriting Losses and Expenses			43,222,023.05		
29. (b) Loss from Underwriting during 1921. (Carried Forward)					$570,770.16

(a) Give statement number of each item or portion thereof included herein.
(b) Write "Gain" or "Loss."
[Footnote (c) illegible.]

[fol. 1932] Investment Exhibit

Interest and Rents

		(Brought Forward)			$570,770.16
30. Interest, Dividends and Rents received during the year, per item 27, page 2, less item 33, page 3	$3,284,360.98				
31. Deduct Interest, Dividends and Rents due and accrued Dec. 31, 1920, per item 35 of last year's exhibit	544,309.00				
32. Balance	$2,740,051.98				
33. Add Interest, Dividends and Rents due and accrued Dec. 31, 1921, per item 24, page 4, less items 38, page 4, and 24, page 5	694,866.00				
34. Add Interest and Rents paid in advance Dec. 31, 1920, per item 38 of last year's exhibit....					
35. Total	$3,434,917.98				

Stock, Fire, and Marine Companies—Continued

				Gain in surplus	Loss in surplus
36. Deduct Interest and Rents paid in advance Dec. 31, 1921, per Liability Exhibit, page 5	.....	.....		.....	.....
37. Interest and Rents Earned during 1921		$3,434,917.98		.....	.....
Profit on Investments					
38. Gain from Sale of Ledger Assets, per item 36, page —	$201,361.64			.....	.....
39. Gain from Increase in Book Value of Ledger Assets, per item 37, page 2	.....			.....	.....
40. Gain from Change in Difference between Book and Market Value during 1921	6,001,869.66			.....	.....
41. Gain from Other Investments, viz.:—(Give items and amounts) Item 39, page 2	1,500.48			.....	.....
42. Profit on Investment during 1921		6,204,731.78		.....	.....
43. Investment Income Earned during 1921			$9,639,649.76	.....	.....
Loss on Investments					
44. Loss from sale of Ledger Assets, per item 39 page 3	$1,233,607.18			.....	.....
45. Loss from Decrease in Book Value of Ledger Assets, per item 40, page 3	.....			.....	.....
46. Loss from Change in Difference between Book and Market Value during 1921	.....			.....	.....
47. Loss from Other Investments, viz.:—(Give Items and amounts.)	.....			.....	.....
48. Loss on Investments during 1921		$1,233,607.18		.....	.....

Investment Expenses

49. (d) Investment Expenses paid during 1921, per Disbursement Exhibit, page 3. (Attach exhibit.) ⅛ of 1% on Mean Invested Assets (	$72,988.35			.....	.....
50. (a) Deduct Investment Expenses unpaid Dec. 31, 1920, per item 57 of last year's exhibit	.....			.....	.....
51. Balance	$72,988.35			.....	.....
52. (a) Add Investment Expenses unpaid Dec. 31 1921, per Liability Exhibit, page 5, viz	.....			.....	.....
53. Investment Expenses Incurred during 1921		72,988.35		.....	.....
54. Investment Losses and Expenses during 1921			1,306,595.53	.....	.....
55. (b) Gain from Investments during 1921				$8,333,054.23	$570,770.16

Miscellaneous Exhibit

	Gain in surplus	Loss in surplus		
56. Dividends declared to Stockholders during 1921	.....	$2,250,000.00	.....	.....
57. Dividends declared to Policyholders during 1921	.....	.....	.....	.....
58. Remittances from Home Office (gross)	.....	.....	.....	.....
59. Remittances to Home Office (gross)	.....	.....	.....	.....
60. Decrease in Special Reserves	.....	.....	.....	.....
61. (a, b) Gain from Other Sources:—	.....	.....	.....	.....
62. Profit & Loss, Item 30, Page 2	$140.00	.....	.....	.....
63. Surplus paid in Item 31, Page 2	3,000,000.00	.....	.....	.....
64. Net (b) Gain from items 56-63	.....	.....	750,140.00	.....
65. Total Gains and Losses in Surplus during 1921	.....	.....	$9,083,194.23	$570,770.16

Stock, Fire, and Marine Companies—Continued

			Gain in surplus	Loss in surplus
66. Surplus Dec. 31, 1920, per item 73, of last year's exhibit		12,451,744.24		
67. Surplus Dec. 31, 1921, per item 36, page 5		20,964,168.31		
68. Increase in surplus during 1921 (Enter in column to balance)				8,512,424.07
69. Totals			$9,083,194.23	$9,083,194.23

70. Per cent of losses incurred to premiums earned 50.95
71. Per cent of underwriting expenses incurred to premiums earned 40.72
72. Per cent of investment expenses incurred to interest and rents earned 2.12
73. Per cent of total losses and expenses incurred and dividends declared to total income earned (sum of lines 28, 54, 56 and 57, divided by the sum of lines 13 and 43) 89.46

(a) Give statement number of each item or portion thereof included herein.
(b) Write "Gain" or "Loss."
(d) Include in this item one-eighth of one per cent of the Mean Invested Assets; Repairs, Expenses and Taxes on Real Estate; such other Taxes and Fees as apply to Investments and Personal Property only; and such other items, if any, as are known to apply exclusively to the assets of the company.

[fol. 1633] The Referee: Just a moment. I understood you to say, Mr. Buswell, that your company had been doing business in the State of Missouri at a loss?

[fol. 1634] A. For several years past; I think.

The Referee: For how many years past, do you know?

A. I couldn't answer that precisely, I haven't prepared myself and haven't looked up to see.

The Referee: Generally, what would you say—from your best recollection?

A. My impression is that for about three years past, or possibly four, we have made no money in Missouri.

The Referee: How long has your company been doing business in Missouri?

A. About 1853. I think we went into St. Louis among the first agencies we ever started.

Mr. Folonie: I don't know that either the witness or the court is informed as to the result of the computation of this company which has been turned in, as to their experience for the five years we are inquiring about. I don't wish to interpose anything, but I happen to know what that figure is. I think—I have my information second hand, but I am informed that for the five years——

Mr. Barker (interrupting): Just a minute. I would rather he wouldn't put that in. He has it here.

The Referee: Is the information which you are now about to give contained in any of the exhibits which have been filed?

Mr. Folonie: Those that have been sent to counsel for offering in evidence.

The Referee: But they are not contained in exhibits that have now been offered in evidence?

[fol. 1635] Mr. Folonie: Not in these here.

Mr. Barker: But are in previous hearings.

The Referee: They are in the record?

Mr. Barker: Yes.

The Referee:

Q. Do you know, Mr. Buswell, whether or not as a whole your business in Missouri has been profitable or unprofitable?

A. You mean for seventy years?

Q. Any length of time that you choose to designate.

A. I can't answer that; for until about 11 or 12 years ago I was in immediate charge of the western underwriting. In those days I was quite familiar with what was going on, but since then I have had practically nothing to do with it.

Q. But you have the belief in your own mind that for the last three or four years you have been doing business in this state at a loss?

A. That is my understanding of it, yes, sir.

Q. How has the volume of your business in that state during those years compared with its volume in previous years, when you were doing business at a profit?

A. I think the volume is larger than it was in previous years; last five years it must be larger than the previous five year period.

Q. During this period when you have been doing business at a loss have you been actively pressing your business in the State of Missouri?

A. I can answer that only in a personal way—that naturally we are pressing our business where we believe it is good.

[fol. 1636] The Referee: Read me that answer, Mr. Blume, please.

(Answer read by the reporter.)

The Referee:

Q. Well, have you been pressing your business in the State of Missouri during that period?

A. I think so; just as we are everywhere else.

Q. Did you disregard—did you regard the business, then, as being good in the State of Missouri during that period?

A. Must have believed that there was some good business in Missouri, and we tried to get it.

Q. In other words, you would make at least a reasonably diligent effort to secure business in the State of Missouri during the period when these losses were incurred?

A. Yes.

Q. To what do you attribute the fact that you sustained a loss during that period in the State of Missouri?

A. I am not sufficiently familiar with the details to answer that question; what class of business the losses came on or why or where. I don't know.

Q. Can you tell me in what other states during the same period you also sustained losses?

A. Oh, yes; many.

Q. Most?

A. Not most, no.

Q. Can you tell me whether or not the conditions which resulted in a loss in Missouri and in the other states were generally speaking the same conditions, or different conditions in the different states?

A. Conditions would vary in different states.

[fol. 1637] Q. Yes, but that isn't my question—pardon me. Can you tell me whether or not the conditions which influenced the losses in Missouri and in the other states were the same or different?

A. I can't answer that question.

Q. I believe you stated you were unable to state why you sustained a loss in Missouri?

A. Yes, I said so.

Q. You said that you could not state that?

A. I can't tell you why.

Q. Can you tell me, either from your personal recollection or from any exhibits which have been introduced into the record here, what the amount of that loss was in the State of Missouri?

A. No, I cannot. I haven't the figures.

Q. In determining whether or not you have made a loss or profit in a given state in a given period, can you tell me how you ascertain that fact?

A. Yes; losses incurred and expenses, and the increase or decrease in the unearned premium reserve.

Q. And in the expense items you include what?

A. Actual expenses, relating to that business.

Q. Relating to that business in the State of Missouri?

A. Expenses not only in the State of Missouri but elsewhere.

Q. That is to say, if I understand you correctly, you consider expenses which are peculiar to Missouri for the period under investigation?

A. Yes.

Q. Plus a portion of your general expenses?

A. Yes.

[fol. 1638] Q. And by general expenses you mean to in-

clude the expenses which are diffused to a greater or less extent over the entire territory throughout which you do business?

A. Yes, items of expense that are not readily segregated.

Q. Yes, such as expenses of the home office?

A. Yes.

Q. Salaries of the chief executive officers?

A. Yes. The advertising and printing.

Q. Yes, and things which are general in their operation?

A. Yes.

Mr. Folonie (resuming cross examination):

Q. One question I would like to ask you, if the court has finished, before turning it back to other counsel. If during the period of five years—I will ask you to assume this for the purpose of your answer—if during the five years from 1917 to 1921, inclusive, in the State of Missouri it is the fact that the Home Insurance Company has made an underwriting profit and the other company or companies under the same management, of which you testified you are also an officer, show an underwriting loss during that same period, and were under the same general management and control, are you able to give us any information as to why one of those companies should show a profit and the others under the same management a loss?

A. Assuming that to be a fact, it might easily occur, in fact it would be hard to avoid it; that the experience of one company, even under similar management, would vary from that of another in any given year. Over a long period we would expect them to be about the same.

Mr. Folonie:

[fol. 1639] Q. Why would you expect or anticipate there might be a difference, and one show a profit and another a loss?

A. Well, fires might come on the business that one company wrote a little more frequently than that of another. For example, the Home is interested in a large number of agencies in the state—very much larger number than the other two companies are; smaller companies. Fires might occur in the country, farm business might be bad; any number of things might occur that would affect the Home that

would not touch the others at all—because of the distribution of their business, which is different.

Q. Or vice versa?

A. Yes; losses might come in the other place and these smaller companies would get a smaller proportion of the losses.

Mr. Folonie: That is all.

The Referee:

Q. In other words, one company might suffer losses much larger than another although operating in substantially the same territory?

A. Oh, yes; very easily, because they are in different agencies, writing different business.

Q. So that the question of net profit or loss as between two or more companies is affected largely by the losses sustained?

A. Precisely, yes.

Q. The element of management enters into the question of profit or loss, also does it not?

A. You mean by that the difference in the expense of conducting the business, or the difference in selecting of the business?

[fol. 1640] Mr. Folonie: I think you are confusing, because he is thinking of the management of his own companies, which is all the same.

The Referee:

Q. I mean as between two companies which are under different managements, the company more efficiently managed may reap a profit where the company less efficiently managed may incur a loss in the same territory and at the same time?

A. That is true.

Q. And that irrespective of any difference in the actual conflagrations which—conflagrations or burnings of any size?

A. Precisely.

Mr. Folonie: Do you have the same agents for these different companies your same management, or different agents?

A. We aim to have them in different agencies.

Mr. Folonie: I am talking about local agencies, now.

A. Yes.

The Referee:

Q. Now, in two companies under the same management would there be any condition which might result in a loss to the one and a profit to the other, other than the mere chance of one having a greater number of losses by reason of conflagrations or ordinary destruction of buildings by fire?

A. There should be nothing except chance; if they are under the same management and operating under the same general plan.

[fol. 1641] Q. Then with two companies under the same management the difference; if any, in the matter of making a profit or loss in the same state at the same time would be determined largely by the circumstances of which had the larger amount in losses—I mean larger amount of losses by reason of the number of fires?

A. Larger number of losses in proportion to its income in the state, that is true. That is correct.

Redirect examination by Mr. Barker:

Q. Mr. Buswell, referring again to the testimony of Mr. Henry Evans about which I asked you, did you hear him make this statement and do you subscribe to it: "I don't care about $2,500,000 or a $3,000,000 fire. Just as soon have it or not. I would put so much business on my books and put rates so high I would make it up?"

A. I did not hear him say it, and I certainly don't subscribe to it.

Q. Well, that would be the effect, wouldn't it? You would increase your rates to pay for it and make more money?

A. No. $2,500,000 fire?

Q. Or a $3,000,000 fire?

A. No, no. That was a time when that could be done, but not now.

Q. You understand Mr. Evans is sick and can't be here today?

A. I understand, yes.

Q. Now, did you hear Mr. Edwin Milligan, vice-president of the Phœnix & Hartford, testify, as follows, and do you subscribe to this: "Speaking for the company, for the fire insurance companies, I should say that the reduction of the [fol. 1642] fire waste would not be a proper thing. I think, Mr. Chairman, that as a business fire insurance is conducted by companies like the one I represent with most satisfaction and with larger profits in the years when fires are plenty; a good number of fires means a good premium account?"

A. I did no hear him say it. I didn't know he testified there.

Q. Do you agree with him on it?

A. No, not wholly.

Q. But that is the theory of insurance, isn't it?

A. If there was no fires we would get no premiums.

Q. Then the greater number of fires the more premiums?

A. Not necessarily.

Q. Then you don't agree with Mr. Milligan?

A. Not entirely.

Q. Are you familiar with the New York insurance report which was filed in 1910 in the same connection, and which, in substance, reads as follows: "Against that we have a certainty that the fire loss could be at least cut in two; that there could be not only a saving of one hundred million dollars a year in property now destroyed, but nearly as much more insurance expense, certainly hundreds, perhaps thousands, of lived saved and a world of worry and suffering." Did you read the report—you have it in your office?

A. Yes. Is that the American committee?

Q. Yes, sir.

A. Yes, I have the report; that is true, of course, in an abstract way.

[fol. 1643] Q. Meaning if you had inspected property and paid attention to writings you could reduce rates to that extent?

A. No, that is not what it means.

Q. Now, when the report says you could cut your fire losses half in two—would you like to do that?

A. Yes, very glad to. We are trying to do it all the time.

Q. And you can do it by being more careful in your risks, can't you?

A. I don't see how.

Q. But yet this says you could cut your losses half in two.

A. Could be if the property owners would exercise some care.

Q. But it would make no difference, because you pass it on to the policyholder, anyway.

A. That is is not possible in these days.

Q. Do you make a difference, today and a few years ago?

A. Yes; 15 or 20 years ago. The difference is that then it was possible, when we had full control of our rates in case of a real necessity to get an increase to save the solvency of the companies. It can't be done now, with the states controlling it in so large a degree.

Q. In that same American committee report, did you observe the testimony of Mr. Elkins, the general manager of the Scottish Union & National Fire Insurance Company of Edinburgh, when he said, "Were there no fires there would be no insurance business, and on the other hand the greater the fire damage the greater the turnover out of which insurance companies make profit. Speaking tonight as manager of a fire insurance company, I say that we cannot make profits for our shareholders without fires, and further that [fol. 1644] within certain well defined limits we welcome fires." Is that your theory today?

A. Not entirely, no. As I said a moment ago, if there were no fires there would be no premiums.

Q. Then you want fires?

A. No, we are doing everything we can to stop them.

Q. What do you mean, "if there were no fires you wouldn't have any premiums"?

A. Because the owners of property would not insure it.

Q. Then fires do stimulate insurance?

A. Yes.

Q. And to that extent, from a financial standpoint, it is helpful to your company?

A. Why, it is the principal cause of the premium income that we all get.

Q. And to that extent, from a financial standpoint, helpful to your company?

A. Why, certainly.

Mr. Barker: I think that is all.

Recross-examination by Mr. Folonie:

Q. If nobody died there wouldn't be any life insurance companies at all, would there?

A. If nobody ever got sick there would be no doctors.

Q. Therefore, to that extent, people being sick is helpful to doctors and people dying is helpful to life insurance companies?

A. Yes.

Q. And if nobody had any litigation then there wouldn't be any lawyers and to that extent lawyers welcome litigation.

A. Parallel case, I think.

The Referee: May I suggest that of some of three facts the court will take judicial notice.

Mr. Folonie:

Q. You don't intend by your answer to counsel to in any [fol. 1645] way carry the inference that you are in any way interested or desirous of increasing the number of fires or the losses arising from them?

A. On the contrary, I tried to make it clear to him that we are doing everything we can to stop them.

Q. Do you spend any of your receipts, of your company, in an effort to prevent and minimize fire waste?

A. A very large amount every year.

Q. In what way do you spend it? What are the activities of your company and other companies in efforts to minimize and prevent fire waste and damage?

A. In common with other companies, we support the inspection bureaus that are engaged almost entirely in pointing out the physical defects in risks that could be removed and should be. Then for ourselves individually we have a large number of inspectors that do nothing else but go around and inspect property that we insure, and they are most of them expert engineers.

Q. Do you also help support fire patrols, so-called?

A. Wherever there is a fire patrol, we are contributors to it.

Q. What do they do?

A. They go around to fires and protect property and attend all fires.

Q. In the event there is a fire, they go along with the fire department and cover up the goods so as to prevent water and fire damage to goods?

A. Usually get there ahead of them, and whether the property is insured or not makes no difference to them.

Q. They don't limit themselves to the ones where there is insurance?

A. They do not; they don't know.

[fol. 1646] Q. What cities do you think of offhand where fire patrol is supported by fire companies?

A. New York, Philadelphia, Boston, Chicago, St. Louis—I think Kansas City, I am not positive of that—Minneapolis, San Francisco—most cities that are large enough to justify the effort without too much expense.

Mr. Folonie: That is all, with this witness.

Redirect examination by Mr. Barker:

Q. Just one more question, Mr. Buswell. Mr. Buswell, you in a general way are familiar with all of the great insurance business and the activities of the companies throughout the United States, I take it?

A. I try to be.

Q. Yes, sir. Now, I find that the total fire insurance premiums written in the United States for the last five years have averaged about a billion dollars. That is about right, is it?

A. Averaged how much a year?

Q. A billion dollars a year, for the last five years.

A. Fire premiums?

Q. Total fire premiums of the United States.

A. Oh, I would question that.

Q. You don't think they would be quite that high?

A. No.

Q. All right. Now, is it true that four per cent of the companies, including yourself, write about 40 per cent of the volume of the insurance business of the United States?

A. I couldn't answer that offhand.

Q. Do you think it is true that 25 per cent of the American stock companies write net premiums each year [fol. 1647] under this five year period of about $325,000,000 in the United States?

A. 25 per cent of the companies? In number?

Q. Yes, sir.

A. That may be about right. I don't know. Approximately so.

Q. Is it true that the Home and Continental Fire Insurance Companies—I assume you are familiar with both of those—in the last year 1920, for instance, did $62,000,000 in fire insurance premiums in the United States? That would be about right, wouldn't it?

A. I don't know what the Continental's figures were. I should say ours were about $32,000,000; 31 or 32.

Q. Theirs would be about the same?

A. No, I don't believe so; not quite so large.

Q. Now, is it true for instance that at least one-third of all the premiums paid in the United States were paid to foreign companies? I mean companies foreign to the United States.

A. I don't know. They got a very large amount of the premiums, but what the fraction is I have no means of telling you now.

Q. As a matter of fact, the insurance business of the United States, I mean the substantial business, is controlled by five companies, is it not?

A. Five companies?

Q. Yes, five companies.

A. Oh, no.

Q. A substantial part of it?

A. More than that—a larger number of companies than that.

Q. Now, Mr. Buswell, with reference to plaintiffs' Exhibit No. 803, which you produced, showing your underwriting gain or loss and your investment gain or loss [fol. 1648] 1917 to 1921, inclusive, without giving me the figures, it shows that your investment gain was substantially greater than your underwriting gain, doesn't it?

A. It does.

Q. So that it is a safe assumption to say that the larger profits, if there are any profits to your company, come from investment gains rather than the underwriting gains?

A. That is obvious.

Q. And that is true, covering the period of many years, would it not be—or just this limited period?

A. Well, it is certainly true of that period; whether that

would be true of the previous five or ten years I couldn't tell you.

Mr. Barker: I believe that is all.
Mr. Folonie: That is all.

(Witness excused.)

The Referee: We will take a five minute recess now, gentlemen.

(Which was accordingly done, after which the following proceedings were had:)

Mr. Folonie: I should like, if the court please, to devote this afternoon to getting into shape whatever else we are to produce here, and particularly to produce what opposing counsel may desire.

As far as my memory and notes indicate, we have produced on behalf of the Home Insurance Company now all that he asked of Mr. Kurth, except the statement respecting salaries which he mentioned, and I should like this afternoon to take time to see that that is gotten out.

[fol. 1649] Mr. Froggatt was also to prepare a statement that Your Honor asked him for, as to what percentage of the unearned figure would be returned as returned premiums—I think that was about the substance of what you asked him to compute.

I would like to look over whatever he has gotten together on that, and if he hasn't gotten it together to hurry him on it.

Mr. Leahy: He will be ready tomorrow.

Mr. Folonie: In other words, I don't want to leave this until the last minute and then find they are unsatisfactory and have to stay here to try and correct something.

Now, General Barker, is there anything from the Home that I have not covered by this exhibit, except the salary item, that you wanted?

Mr. Barker: Well, I haven't looked at it. I think that is all right. I don't care for that big book at all. We have that.

Mr. Folonie: Yes, but part of that you asked for by way of investments they had and so I produced them and offered it as my exhibit.

Now, is there anything except the salary item that you want?

Mr. Barker: Well, Mr. Blume would have to give the order. I don't think of anything more now.

I want to call for some witnesses at Hartford as soon as you get there, so you will have an opportunity there. What you mean now is you don't want to work this afternoon, I take it?

[fol. 1650] Mr. Folonie: No. I would suggest that if we go on here a little while I want to call the court's attention to the contents of the exhibits that have been introduced, briefly, and then if it is agreeable to you gentlemen I should like to adjourn and then I should think we ought to get through tomorrow, as far as I can judge.

Is there anybody else that you have in contemplation—I mean that you want of us?

(Discussion ensues between counsel, not made a part of this record.)

Mr. Barker: I withdraw the request for Mr. Robb.

And we have asked for Mr. Henry Evans, chairman of the Board of the Continental, and if Mr. Evans is available any time this week or next week that we are here we would like to have an opportunity to examine him, if his disposition is such that he can attend any of the hearings, as we are very anxious to examine Mr. Evans.

Mr. Folonie: Bodily disposed, you mean by that?

Mr. Barker: Yes. Now, I would like to have Mr. Edwin Milligan, vice president of the Phœnix of Hartford.

Mr. Folonie: He is not the vice president. He is the president now.

Mr. Barker: Yes, I understand that. We will have him over there, I assume? He lives in Hartford, doesn't he?

Mr. Folonie: That is his home, yes.

Mr. Barker: If you can get me Mr. Milligan I would like to have him. I think that is all we have.

[fol. 1651] Mr. Hogsett: Gentlemen, do you think of any information that you requested of Mr. Lane which has not been produced—as far as we can recall we have produced it all.

Mr. Barker: All I can say is that I haven't checked it up, so let me have it this afternoon and I will check it up. What I have looked at so far is all right, but I don't remember seeing anything from Mr. Lane.

Mr. Hogsett: Mr. Walsh brought in what you asked for from Mr. Lane.

Mr. Barker: Oh, I see.

Mr. Folonie: I will ask that if counsel finds himself of the opinion that we have not produced what he wishes, to let us know at as early a time as possible, so we will have an opportunity to produce it before we leave it, and alternatively, if he finds and notifies us of something hereafter that he believes is missing, that he has required, we will undertake to secure it and have it mailed to the court at a later time.

Mr. Barker: You can furnish us with those other four years—similar to plaintiff's Exhibit No. 802. I did make an objection that you ought not to introduce one year's experience alone. You ought to introduce the five years'. If you want to accommodate somebody—you stated that you can get it for us.

Mr. Folonie: I will see if they have some extra copies and if they have them I will be glad to get them for you to save trouble of your copying them.

[fol. 1652] The Referee: I assume, gentlemen, that nothing can further be done in the way of hearing evidence until tomorrow morning at ten o'clock?

Mr. Folonie: I think possibly I could secure a witness for this afternoon, but I think it would be more profitable to wait until tomorrow afternoon. I would much prefer it, and I will have to take time at some interval here to rather pick up tag ends, and I would appreciate it if the court would adjourn now until ten o'clock tomorrow morning.

The Referee: Is that agreeable to counsel on the other side?

Mr. Barker: Yes, sir.

The Referee: Adjourned, then, until ten o'clock tomorrow morning, gentlemen.

(Whereupon an adjournment was taken until 10:00 o'clock a. m. of the following day, the same being Friday, the 19th day of October, A. D. 1923; at which time parties reconvened at the same place, and the following proceedings were had:)

NORMAN T. ROBERTSON, called as a witness on behalf of the defendant, having been by the referee first duly sworn, was examined and testified as follows:

Mr. Folonie: Pursuant to request of opposing counsel for the production of an officer of the Continental Insurance Company, we have here Mr. Norman Robertson this morning the president of that company.

[fol. 1653] Mr. Barker: What company is that?

Mr. Folonie: Continental. We announce his presence, pursuant to the stipulation and the request of counsel under the stipulation.

Mr. Barker: All right.

Direct examination by Mr. Barker:

Q. Your name is what, sir?

A. Norman T. Robertson.

Q. And your official position with the Continental is what?

A. President of the company.

Q. How long have you been president of the company, Mr. Robertson?

A. Two years next 19th of November; almost two years.

Q. Did you succeed Mr. Evans?

A. No, I succeeded Mr. J. E. Lopez; and he succeeded Mr. Evans.

Q. And he succeeded Mr. Evans?

A. Yes, sir.

Q. Mr. Henry Evans is now chairman of the board of directors of the Continental?

A. Yes.

Q. What companies does the Continental control, besides the one you have named?

A. Why, the Continental and the Fidelity Phœnix, which is a sister company, control the American Eagle and the Farmers of Cedar Rapids, Iowa. This is a joint control between the two companies. The Continental individually does not control any company.

Mr. Folonie: You have abbreviated each of those names. Give the full name.

[fol. 1654] A. The American Eagle Fire Insurance Company of New York. The Farmers Insurance Company of Cedar Rapids, Iowa.

Mr. Folonie: What is the Fidelity Phœnix you mention?

A. The Fidelity Phœnix Fire Insurance Company of New York. You will have to pardon me if I do slip into these terms, because they are just our every-day talk.

Mr. Barker:

Q. Now, the Continental, I believe, was organized in 1853, with a capital stock of $500,000?

A. Yes, sir.

Q. At the end of 1919 its capital was $10,000,000, of which $8,000,000 was in the form of stock dividends. Right?

Mr. Folonie: We object to this line of inquiry asked for as not any proper inquiry in this case, which should be directed to the question of the underwriting profits or losses and the profits—gains or losses made or suffered upon the business conducted in the State of Missouri during the period of five years antecedent to the rate order in question.

The Referee: Overruled. The same objection will be considered as having been made and ruled on in like manner with reference to the same line of inquiry throughout the interrogation of this witness.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: The court having with previous witnesses held over my objection that inquiry as to dividends and [fol. 1655] earnings upon investments and the earnings of the company from all sources and their national income, as distinguished from their income derived from the State of Missouri, may all be inquired into, may this objection then stand to any of those branches of the inquiry, if pursued by counsel, without reiterating the objection?

The Referee: Yes.

Mr. Barker: Now, will you read the question, Mr. Blume?

(Question read by the reporter, as follows:

"At the end of 1919 its capital was $10,000,000, of which $8,000,000 was in the form of stock dividends. Right?")

A. The answer to that is—I will read you the whole thing, so you will get the connection. This company began business in January, 1853, with a paid in capital of $500,000——

The Referee (interrupting): Will you read just a trifle louder, please, that I may hear?

A. In January, 1853, with a paid in capital of $500,000, par value $100 per share. In October, 1871, its capital was increased to $1,000,000 by the sale of new stock; and in March, 1910, it was increased to $2,000,000 by stock dividend of $1,000,000.00.

In January, 1916, the capital was increased to $10,000,000 by stock dividend of $7,000,000, and the issuance of $1,000,000 new stock at par. The number of shares was changed from 20,000 par value $100, to 400 shares par value $2,500 (400,000 shares, par value $25, per share) (?) The stockholders were given the right to subscribe at par for two [fol. 1656] shares of the new stock, par value $25, for each share of the old stock held.

Q. Then to get the record clear, at the end of 1919 your capital was $10,000,000, of which $8,000,000 was in the form of stock dividends, only two million having been contributed of the ten million by stockholders?

A. That is right, sir.

Q. At the end of 1919 the value of the stock, plus the dividends paid out, amounted to over $52,000,000. Right?

A. I couldn't say about that. That is something that I don't recall.

Q. Don't your figures which you have just read show that?

A. Well, the value of the stock, as I take it, is the market value of the stock, and that varies from day to day.

Q. Take your stock of today, what is its par value, of each share?

A. $25.

Q. What is it worth?

A. Last quotation on it was 92 bid, 95 asked.

Q. Less than 4 for 1, do you think?

A. Well, that is a trifle less than 4 for 1. $100 would be 4 for 1.

The Referee: You are speaking now of the market value as distinguished from the book or actual value, Mr. Robertson?

A. Yes, sir.

Mr. Barker:

Q. Do you know the book value of your stock today?

A. I haven't figured it out; changes, of course, from time to time.

[fol. 1657] Q. You receive your income from your underwriting activities and your investment activities?

A. Yes, sir.

Q. And both incomes are placed in one general fund?

A. Yes, that is right.

Q. And all the expenses of the company, both underwriting and investment, are paid out of that fund?

A. Naturally.

Q. Take the five years in question, please, Mr. Robertson, from the 1st of January, 1917, to the 1st of January, 1922 and give me, if you please, the dividends, if any, paid to stockholders and the amount contributed to surplus within those years.

A. I don't remember that exactly. I have the surplus figures here. There have been one or two increases in the stock dividends—I don't mean the stock dividends, but the rate of dividends, in that period. Would you like for me to just say from memory what I think it is?

Q. Yes. I think we all know, but I just want it to be in the record.

A. I am under the impression that within that period the dividend paid has increased from $3 per share per annum to $6 per share per annum. That may not be right, but that is my opinion. I know that there have been several increases.

Q. Do you know, and have you the figures there, as to what stock dividends you declared, for instance, in 1917?

A. No, sir. You mean—you don't mean stock dividends, do you?

[fol. 1658] Q. I mean stock dividends, declared and paid to the stockholders—if that is a stock dividend.

A. That is not a stock dividend.

Q. What is a stock dividend?

A. That is a stock dividend, of stock, where the amount of stock that you would get would be increased. This other is a regular dividend.

Q. Regular or cash dividend, perhaps?

A. Wouldn't call it a cash dividend. You would merely say a dividend.

Q. A dividend?

A. Yes.

Q. Can you tell me the dividend, if any, paid in 1917 to the stockholders?

A. No, sir, I can't, for the reason that I just mentioned. I don't fix those years.

Q. Can you tell me what you added, if anything, to surplus in 1917?

A. (Witness makes calculation.) That information is not available. I am sorry.

The Referee: Did I understand you a few moments ago to refer to some other sort of dividend than a cash dividend or a stock dividend?

A. I did not intentionally refer to any such dividend, because we have never paid any other kind except stock dividendsand cash dividends. I don't think that I mentioned any other kind.

The Referee: I wasn't sure from your language whether you had some other form of dividend in mind or not.

Mr. Barker:

Q. Now, Mr. Robertson, your company, the Continental, is a fire insurance stock corporation, having a certain capital stock?

A. Yes, sir.

[fol. 1659] Q. And at the end of the year you figure the earnings of your company as against that capital stock, do you?

A. We don't pay much attention to the capital stock in figuring our earnings, though dividends are disbursed at so much per share. The capital stock doesn't enter into it except as a measure of the dividend that we pay.

Q. You must of necessity settle with your stockholders in proportion to your capital stock, must you not?

A. Absolutely.

Q. Just like bank corporations, telephone corporations,

street car corporations, the question of earnings is always figured against the capital stock?

A. No, I don't agree with you. Our earnings are figured on the volume of business transacted, sir. That is the only proper basis to figure, in our opinion.

Q. Tell me how, if you are going to take, for instance, a stockholder that has $100 worth of stock, par value, and you determine to pay him a 50 per cent dividend, and he gets $50, what difference does it make to him or your company as to your volume of business?

A. Well, the volume of business is what we might call the raw material out of which we manufacture our profit, if we are so fortunate as to be able to do that. If we don't do the business, why, we wouldn't have the dividend. The ownership of stock simply means the proportionate holding. In our case $100 par value—we have $25 par value, by the way—but $100 par value would mean 100/1000 of the enterprise.

[fol. 1660] The Referee: When you refer to the volume of business, you mean by that expression the gross of the premiums written in a given year?

A. The gross has no significance, particularly, except to indicate the trend of the business. There are so many deductions from gross that that is just the starting point.

The Referee: What do you mean by volume of business for a given year, Mr. Robertson?

A. Well, I mean the net premiums that are left after deducting returned premiums and reinsurances and cancellations and so forth.

The Referee: Well, does that mean net earned premiums, or other premiums, or both, or what?

A. Well, we never figure the profit except on an earned premiums basis. Any other way would be fallacious and misleading.

The Referee: Then in referring to the matter of profit and calculation of it, you always mean to refer to the basis of calculation as the earned premiums—take that as the basis of your calculations?

A. Yes, sir; that is correct.

Mr. Barker:

Q. Mr. Robertson, in order that you may understand me and I may understand you, let us suppose that you, in one instance, are president of a $100,000 capital stock fire corporation. At the same time you are president of a $100,000 capital stock bank. Let us suppose that on the fire company, for any given year, you take in $100,000—the amount [fol. 1661] of your capital. Let us suppose that in the bank you do $100,000 worth of business, just the same as you did with the fire company—your volume of business in each instance is $100,000. Now, let us suppose that on your fire company your expenses and your losses, additions to surplus, every charge of every kind and character, amount to $90,000, so that in your fire company at the end of the year you have left $10,000 left. Now, let us suppose in your bank you have expenses for conducting your bank of all kinds and all charges of every kind and character amount to $90,000, so that your bank has $10,000 balance net. Each of your $100,000 corporations having in that respect $10,000 left. Now, you were figuring profit—you would figure the profit the same in one as the other, would you not?

A. Well, the stockholders' share of the profit would be figured on the same basis; but, as I say, the only way that we can possibly figure our profits is on the business transacted. That is the premium income received.

Q. Well, I have said you had $100,000 in that instance in your fire company, and you had $10,000 left, against a capital stock of $100,000. That would mean that the corporation as a corporation earned $10,000, would it not?

Mr. Leahy: A very legal conclusion.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 1662] Mr. Folonie: Mathematical conclusion, I think.

The Referee: That is also overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. If it were earned—if we earned it, why, you have got it. That is all there is to that, that I see.

Mr. Barker:

Q. Then if you earned $10,000 on that bank of $100,000 capital, you would figure exactly the same way, would you not?

A. I am not familiar enough with a bank to say how they would figure it.

Q. Mr. Robertson, you are president of the Continental Fire Insurance Company?

A. Yes.

Q. You are a man of affairs in the insurance world. Now, you understand the illustration which I have just given you. Can't you tell me if there is a difference and explain why there should be a difference in figuring the profits of these two corporations?

Mr. Folonie: Object to that, because it assumes that the bank figures it one way or the other, and he says he doesn't know how they figure it.

The Referee: The witness may state whatever he knows, if anything, in connection with the matter involved in the question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Well, I repeat that I cannot compare the two, because I don't know anything—don't know how the bank would figure, not having been in that business and not having acquired that information incidentally.

Mr. Barker:

[fol. 1663] Q. You want to be understood, Mr. Robertson, as saying that you are not familiar with business conditions throughout the country and activities of business so that you know how to figure a profit or loss for a banking corporation of $100,000, generally speaking?

A. Well, as I have said, in the beginning you start out by saying they have made $10,000. If they have made it, why, they have made 10 per cent on their capital.

Q. But do you apply just the same to the banking corporation as to the insurance corporation—it would apply just the same?

A. If you figure it according to the capital, it would, but you don't figure it that way.

Q. Then tell me how you know of any method of figuring the earnings of a corporation except as against the capital stock.

A. Well, in all business, we have to have a capital and surplus, as the surplus is money that is put up by the stockholders or earned by the company, and in our business, and I think in banks, although I don't know, there is not very much distinction between the two. The capital might appear as capital, and the surplus might be transferred to the capital, so that you always have those two funds to consider, as to the equities of your stockholders. It simply means that when you start in business there is a long period you go through when you get no dividends. It ought to be ten years in a conservatively managed fire insurance company, because expenses of the business, acquiring the plant, equipping the office, and everything of that kind, [fol. 1664] are very great, and it starts with a large expense account and it would accumulate a surplus in ten years' time, during which period the stockholders should not get any money—ordinarily. I mean in dividends.

Q. Well, now, suppose, Mr. Robertson, that instead of the vast capital of your company—so that we can figure it a little closer—that the capital stock of your company of which you are president was during the year 1921 $100,000. Now, suppose I am a stockholder in that company——

Mr. Folonie (interrupting): Permit me to suggest, General, that the minimum is $200,000, and I am afraid you will get into misunderstandings with the witness by taking a figure smaller than what he knows is the minimum.

Mr. Barker: Mr. Folonie will see that you are not confused in any way. Just listen to him. You would rather I would figure on $200,000, since Mr. Folonie suggested it, would you?

A. I would have no objection.

Q. No objection at all. Well, I will figure it $200,000 for you. Suppose you are president of a $200,000 fire com-

pany, and I am a stockholder: at the end of the year your volume of business has been $200,000, after deducting all losses and expenses and charges of every kind and character there remains in the hands of the company $100,000; and I, as a stockholder, write you, as president of the com- [fol. 1665] pany, and ask you to write me and tell me what the corporation earned for that year. What answer would you make me?

A. I would write you that it earned just $100,000, exactly what it had earned.

Q. Which, according to a $200,000 capital, would be what percentage?

A. Well, that would be 50 per cent.

Q. Now, if you were president of an industrial corporation of the same kind and character you would write me as a stockholder the same answer, would you?

A. I presume I would, yes.

Q. Now, then, Mr. Robertson, your company receives premiums for the issuance of policies in advance, I assume?

A. That is correct.

Q. And those premiums constitute what you call your unearned premium reserve?

A. Well, not all the premiums. There is a certain percentage that is put up according to certain well known and well defined rules to provide an unearned premium reserve.

Q. That unearned premium reserve consists of premiums collected in advance from policyholders, does it?

A. Well, it consists in part of that. It might consist of part of the funds of the company from the surplus or from its capital, partly.

The Referee: General, pardon the interruption. I want a little information, if Mr. Robertson can give it to me, before we get away from the subject.

Q. I have been under the impression, Mr. Robertson, and if I am wrong about it I would like to be corrected, that a [fol. 1666] capital stock of a fixed amount is a usual and generally a necessary incident of nearly all corporations, without much regard to the line of business in which that corporation is engaged. Am I correct about that?

A. Yes, sir.

Q. I have further been under the impression that generally speaking, with reference to practically all sorts of cor-

porations, fire insurance companies, life insurance companies, banks, railroads, industrial enterprises—what you please—the accumulation of a surplus in the business is generally necessary or at least highly advisable and a usual incident of the business. Is that correct?

A. Yes, sir.

Q. Commonly both the capital and the surplus are used in the business?

A. Yes, sir.

Q. Is that true of stock fire insurance companies—and when I say "in the business," I mean of course to include the individual business of a stock fire insurance company, not only the underwriting business but any investments which it may have?

A. Well——

Q. (Continuing:) So that my question now, Mr. Robertson, if I haven't made myself clear, is this: Is the capital of a stock fire insurance company, and is also the surplus of a stock fire insurance company, used in the business of that company, including in that phrase both the underwriting and the investment ends of the company's business?

A. Yes, that is correct, sir.

Q. Yes. Now, then, I wish you would make clear to me, if you will, why it is necessary, as I have understood you and other witnesses to say, that in determining the earnings [fol. 1667] or profits or net gains—I am using those sometimes interchangeably—of a fire insurance company, the basis from which you calculate must be taken as the earned premiums of the year in question?

A. Well, that goes to the really vital distinction between fire stock corporations and, we will say, the average industrial organization.

Q. That is just what I want explained, if you please.

A. Yes, sir. The industrial organization undertakes certain obligations and carries those obligations out, usually within a short period of time, a matter of weeks or even months, but usually inside of the current year——

Q. (Interrupting.) Now, right there, pardon me, because this perhaps is one of the things that has confused me. With a going concern it is constantly and usually taking on new enterprises.

A. Yes, that is true, but they do not stretch over a term of years. In many instances as they almost inevitably do

with a fire stock company, in the industrial organization will ordinarily build up its surplus more with the idea of stabilizing dividends and covering up its lean years—and averaging its lean years with its fat years, so they can have a constant flow of dividends to their stockholders, whereas——

Q. (Interrupting.) Pardon me there, I don't want to interrupt your chain of thought, but I must get a little light on these various phrases as we go along. A great many industrial organizations do habitually take on contracts which may require the business to be conducted through a term of [fol. 1668] years, as, for example, the building of a subway in this city or the building of a long line of railroad, and various matters of that sort.

A. (Interrupting.) If you will pardon me disagreeing with you, sir, I think the companies you mention are the exceptions rather than the rule, and that, as I said in the beginning, the most of their commitments usually are taken care of within the current year.

Q. Now, you regard that as a primal fact in this connection, do you?

A. That is my opinion of the facts as I know them.

Q. Very well, yes. Proceed.

A. Whereas in the case of a fire corporation we start out with a capital and a surplus. It is practically necessary these days to have a surplus as well as a capital to take care of the various experiences which I mentioned a while ago; and as our stockholders have to go through a long trying out period, we figure that there is a very great and important difference between our enterprise and that of the industrial.

Q. Well, so far as I am able to perceive, the chief distinction which you have pointed out lies in the fact that the holders of stock in an industrial corporation may hope for returns in the form of dividends at an earlier period than certain business methods dictate it should be in a stock fire insurance company, is that the principal reason?

A. Yes, that is the principal reason; and I might amplify that.

Q. Surely.

A. (Continuing:) By saying that in addition to the requirement of the reinsurance reserve, which is the matter [fol. 1669] that we have in mind, there is a very great cost in connection with getting together an organization, both in

the field and in the office, and an agency that is regarded by fire insurance companies, while an intangible asset, is probably one of the most important assets that they have, and that is a long and expensive procedure, so that there is really more to it than just the question of the unearned premiums.

Q. That matter of effecting the organization is one that applies equally as well to a company doing a nation-wide loan business, is it not?

A. I wouldn't say so, sir. I don't so consider it, because a company that is doing a nation-wide loan business would appoint its representatives in various cities and towns which could be done at small expense.

Q. Your company also appoints various representatives in cities and towns in the same way, does it not?

A. Yes, much the same way, but at more cost, because we have to have so many more.

Q. But that is merely a matter of comparison, is it not?

A. Yes, but a very important expense item.

Q. Are there any other reasons than those which you have mentioned that make necessary the use of a different basis of computation in figuring the net earnings as between a stock fire insurance company and an industrial or other business corporation?

A. Those I consider the chief reasons. There may be others but they don't occur to me at this time.

Q. I see. That is all.

[fol. 1670] Direct examination resumed by Mr. Barker:

Q. Now, Mr. Robertson, assuming that your commissions to state agents, for the illustration I wish to make, are 25 per cent, when your agent writes a policy and collects the premium, and in the course of events remits to you, he retains his 25 per cent, as I understand it?

A. Yes.

Q. Then on a $100 policy he would remit to you $75?

A. Yes, sir.

Q. Now of that $75 what do you do with it when you get it in your company, and how do you charge it on your books?

A. Well, it is entered up as a premium, along with others.

Q. The total $75, I mean, is entered up as an unearned premium?

A. No, sir; not an unearned premium. I said, "as a premium."

Q. Well, the total $75, I mean, is entered up then as some kind of a premium?

A. It is a premium.

Q. And entered as a premium?

A. No, that is incorrect. I was mistaken. The $100 is called the premium. We consider the commission of the agent a matter of expense.

Q. Then you enter premium at $100.

A. Yes, sir.

Q. And charge your agent on the other side with $25, charged on the expense?

A. Credit him with $25.

Q. Well, it is a charge against your company and a credit to him?

A. It is a charge against our expense account; yes, sir.

[fol. 1671] Q. Then, having received $75, do you set that aside in any reserve of any kind known as an unearned premium reserve?

A. Well, assuming that the policy issued is a five year policy; during the five years of the life of that policy we only earn 10 per cent and we enter in our unearned reserve $90; and the portion of that $90, of course, has to come from capital or surplus or some other place. It certainly does not come from the premium itself.

Q. That is, 15 would have to be taken from the surplus and set over with your 75 to make this $90?

A. Yes, sir.

The Referee: And that $90 then is a part of the unearned premium reserve?

A. Yes, sir.

The Referee: Which is, as I understand it, merely a bookkeeping entry?

A. Yes, sir; that is a bookkeeping entry.

Mr. Barker:

Q. Now, of the $75 which you receive, at the time of receiving it you deduct an arbitrary amount for the anticipated expenses of handling that policy, do you not?

A. Well, we would not do it in each case, sir. We would charge up all expenses, including the commissions charged,

which for purposes of illustration with the Continental I can say is 40 per cent. There is a 40 per cent charge against every premium of whichever size and whichever term that comes to us.

Q. That $15, then, from the $75, leaving you $60, is anticipated expenses for the handling of that policy?

A. It is not necessarily anticipated expenses. In many [fol. 1672] cases it is incurred expenses and it would be, if we used 40 per cent, there would be $40 plus $90; it would be $130 that we would have to put up against a premium receipt, the actual receipt, of only $100.

Q. But what I mean, Mr. Robertson, is that at the time of receiving the money from the agent there is a charge made against the money which you receive of the expenses incident to carrying the policy, is there not, of say 15 per cent?

A. Well, it would not be carried out for each transaction separate. It would go into the general reckoning and it would all be handled in bulk. We wouldn't undertake to segregate it for one policy.

Q. Is the 15 per cent the amount estimated for the handling of that policy in addition to the agent's commission?

A. No, sir; the 40 per cent is the gross expense.

Q. Well, that is your basis for—that is 25 for agent and 15 for general expense, making your 40 per cent?

A. It would work that way; yes, sir.

Q. That 15 per cent, then, in addition to the 25, which makes your 40, is arbitrarily figured as what it will cost you to handle that policy, is it?

A. I have some figures here that might——

Q. (Interrupting.) Could you answer that question for me?

A. I wouldn't say arbitrarily. I would say it was an actual fact.

Q. You have figured, then, that $15 out of the $100 will have to be paid to you for the handling of that policy, in addition to the agency commission of $25?

A. Yes, sir.

[fol. 1673] Q. And you pay it right then and there, do you not, and settle the matter, so that the expenses are paid in advance?

A. Well, the expenses come every business day of the year. They are constantly being paid out in every form; paid out in the expenses and salaries of traveling men, paid out in taxes and paid out in rent and overhead for offices and officers' salaries and so forth; several hundred items.

Q. Then at the end of the year, Mr. Robertson, you figure the total expenses of your corporation and arrive at a total sum of expenses, do you?

A. Yes, sir.

Q. Now, you should eliminate from your general total expense at the end of the year this 15 per cent which you already charged, shouldn't you?

A. Well, we don't charge up anything but actual expenses. The expense, as I say, is something that goes on all the time and applies to every single premium that comes to us; and when we get through, after we have paid every incidental expense in connection with this $100 premium, the aggregate is approximately 40 per cent; and, of course, the first expense that we incur is the agent's commission of 25 per cent. Then I suppose that you would say the overhead and cost of the clerks and stationery and everything would be another charge that would go on immediately, and then the special agents' expenses and salaries, taxes, and so forth. Those are things that are always with us, and as I say, we pay them constantly and when we get to the end of the year the aggregate is approximately 40 per cent.

[fol. 1674] Q. Then in figuring the general expenses of your company, making up this 40 per cent at the end of the year, that includes both underwriting activities and investment activities, I assume?

A. I don't know just how we figure that, as to whether the investment activities would go against the underwriting or not. I have a memorandum here; if you have no objection I will look at it and see what that investment expense amounts to.

Q. Yes, I readily am not calling for that now, but if you care to look at it, go ahead.

A. I don't care to see it myself.

Q. There can be in the course of your business no actual separation of investment and underwriting expenses, can there?

A. We do separate it.

Q. Well, but it is an arbitrary separation, of course?

A. Well, I am sorry that I can't answer that more accurately, because my activities are confined primarily within the underwriting and general management of the business. The investment end is separate and distinct and is handled by the chairman of the board and the treasurer and his assistants.

Q. Now, what I mean, Mr. Roberston, is this: You can't separate the salaries, for instance, of Mr. Evans, chairman of your board, and find out how many weeks or months he devotes to investments or to underwriting. That is considered as a whole, his activities, are they not?

A. As a matter of fact, our chairman serves without compensation.

[fol. 1675] Q. You mean Mr. Evans receives no salary?

A. No, sir. I mean that he doesn't receive compensation.

Q. He receives no salary as chairman of your board?

A. No.

Q. Then take the officers of your company, they devote some of their time to investments and some of their time to underwriting activities; there can be, in the course of events, no separation of those charges?

A. There are no such officers. The departments are just as separate as it is possible to be; just like a bank that runs a trust department and commercial department.

Q. Let's see. One of your vice-presidents is interested in the investment features of your company, for instance?

A. No, sir; we have no such vice-presidents.

Q. Do you pay any attention at all or devote any of your time during the year to investments?

A. No, sir.

Q. Do the stenographers that handle the work for investments also handle the work for underwriting?

A. No, sir.

Q. Do the stamps which you buy as a whole, part of them are used for underwriting activities and part of them for investment activities?

A. That is trimming it down to such a fine point that I couldn't answer.

Q. Well, take your buildings. Are the activities conducted in the same building?

A. Yes.

Q. Do you own that building?

A. Yes, sir. We own it through a holding company?

Q. You pay rent to the holding company?

A. Yes.

[fol. 1676] Q. And of course you pay so much rent to the holding company for your underwriting activities and so much rent for your investment activities?

A. Yes, sir.

Q. Which are entirely separate?

A. Yes, sir.

Q. What proportion of rent would you pay for your underwrting activities as compared with your investment activities—less or more?

A. Very much less. I suppose that the underwriting activities of the company as a whole would probably require 20 times the space and rental charge that the financial department would.

Q. But your rent is paid out of the same common fund that all your other expenses are paid out of?

A. Well, I couldn't tell you that. I don't know.

Q. Now, your corporation owns the holding company that owns your building?

A. Yes, sir; owns part of it.

Q. And what is the name of that holding corporation?

A. Fire Companies Building Corporation.

Q. Your officers of the Continental are officers of that corporation?

A. Mr. Evans is the president of that corporation.

Q. Well, the officers, I assume, are substantially the same, are they not?

A. No, sir.

Q. Is Mr. Evans the only officer of the Continental that is an officer of the holding corporation that you remember of?

A. Why, as I recall it, the treasurer of the Continental is the secretary of this holding corporation.

[fol. 1677] Q. Mr. Robertson, you have volunteered to tell me, I never asked you, that Mr. Henry Evans serves without compensation.

Mr. Folonie: I object to the statement he volunteered it. He asked expressly what he got and he answered.

Mr. Leahy: What proportion he got.

The Referee: It is immaterial in either event. Counsel differ as to what happened. The record shows, and as far as I can see it doesn't make any difference, anyhow. Proceed.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: I will finish the question now.

(Question read by the reporter.)

Q. (Continuing:) And having told me that Mr. Evans receives no compensation, will you kindly file with your testimony here a statement of the salaries, commissions and bonuses paid to the directors and officers of the Continental Company in excess of $5,000 each?

A. I hesitate to do that, not because I want to withhold the information, but because it is of a private nature. Is it necessary that this information should be given?

Mr. Folonie: Would it perhaps serve counsel's purpose and meet with your objection, Mr. Robertson, too, to put it into groups, without showing the separate salary of each one—for instance, the officers' salaries in one group and other employes in another group?

[fol. 1678] The Witness: I have no objection at all to doing that in the aggregate. I would have to look up the records to see, because there are a number of them, and I wouldn't want to misstate the facts.

Mr. Barker: That is not what I asked you. That may suit Mr. Folonie. That does not suit me. You understood what I asked you to do, did you not?

A. Yes, sir.

Q. Well, that is what I want you to do. Now, you can use your own pleasure about it. I have no way of compelling you—because I question your statement. Not that you have purposely misstated it, but I think you are misinformed as to Mr. Evans' salary, and I want to question that statement of yours in the record, that Mr. Evans receives no compensation of every kind, and you having volunteered it. I didn't ask you for it. I want an opportunity now to have you produce and show whether or not Mr. Evans receives any salary, commissions or bonuses.

Mr. Leahy: Well, he can't impeach his own witness.

Mr. Barker: This man is a defendant.

Mr. Jacobs: And a matter of surprise.

Mr. Barker: He is a plaintiff in this case, and I am not bound by his statement.

Mr. Folonie: There is no question pending just now.

The Referee: None at all.

Mr. Barker:

[fol. 1679] Q. Isn't it true that Mr. Evans receives $150,000 for his services in the way of special commissions and bonuses, not accounted for on the books of your corporation? Is that true, or not?

A. As far as I know, that is not true.

Q. It can be ascertained by you from an investigation of your records, can it not, Mr. Robertson?

A. I might be able to get that information.

Q. Well, if you will get it for me I would like to have it. I don't know of any way to compel you to do it, but the State of Missouri is insisting that you do that.

A. Would you allow me to correct a misstatement that you made?

Q. Certainly.

A. I said that as I thought, in answer to your question, to correct a statement you made, that Mr. Evans received no salary. That is as far as I went.

Q. I never asked you if Mr. Evans received any salary.

A. I said he received no salary.

Q. Well, I never asked you for that information, did I?

Mr. Leahy: Yes, you did. You asked him if his salary was not charged up against the underwriting business and he said no, he didn't receive any.

Mr. Barker: That is purely voluntary.

The Referee: The record will show what was asked and what was answered. I am not able to say whether that question was asked or whether the information was given voluntarily, but it is a matter of no moment whatever in this hearing.

By the Referee:

[fol. 1680] Q. Mr. Robertson, there is one matter to which you referred, and I am not clear as to whether I exactly

understand you or not. I understood you to say that in the matter of the payment of rent for buildings your company occupies, a portion of the rent was paid for the investment end of the business, and a portion of the rent was paid for the underwriting end of the business. Am I correct in so understanding you?

A. Yes, sir.

Q. Now, in order that I may not in any way misunderstand, if that rent, for example, aggregates $100,000 a year, am I to understand that the underwriting end of the business pays a given per cent, or say 60 per cent or $60,000, and the investment end pays the remainder, of say $40,000? Not meaning to indicate that that is the correct proportion, but merely to illustrate the idea I have in mind?

A. Yes, sir; that is right.

Q. Is that rent paid in monthly periods or otherwise?

A. Monthly.

Q. Then I take it your records will show the definite, specific amount paid each month by these two lines of your company's business?

A. Yes, sir.

Q. Is it paid in separate checks or in the same check?

A. I don't know about that, sir.

Q. But at any rate it is definitely allotted as between them?

A. Yes, sir.

The Referee: That is all.

Mr. Barker:

Q. That is simply a bookkeeping entry, is it not, Mr. Robertson?

A. Well, it is a bookkeeping entry, and it is a division of expenses by departments.

[fol. 1681] Q. You have two leases with the holding company, one leasing for underwriting activities and one for investment activities, have you—two separate and distinct leases?

A. I don't know whether we have. We have a great many leases, but just how they stand at this time I couldn't say.

Q. Your company having many departments, as a bookkeeping matter you charge the expenses of each department against that department, don't you?

A. Yes, sir.

Q. And that is what you mean in charging your rents, is it?

A. Yes, sir.

Q. Take your interest earnings on unearned premium reserve, what is that charged against?

A. Well, the interest earnings from all accounts would be credited to the general or the trade profit.

Q. Now, as I understand, as president of this corporation you sustain a relation to the stockholders of your corporation, of course?

A. Yes, sir.

Q. And your activities as a whole are reported to your stockholders?

A. Yes, sir.

Q. And you are responsible to your stockholders?

A. Yes, sir.

Q. Now, Mr. Henry Evans, the chairman of the board of directors of the Continental Fire Insurance Company, American Eagle Insurance Company and the Fidelity Phoenix Insurance Company is one of the outstanding insurance figures of the United States, is he not, Mr. Robertson?

A. Yes, sir.

Q. And an authority in the insurance world?

A. He is so regarded.

[fol. 1682] Q. And you regard him as that?

A. I do.

Q. In fact, in slang parlance and not to be disrespectful in any sense, he is the master mind of the fire stock insurance world, is he not?

Mr. Lealy: That is objected to.

Mr. Barker: All right, I will withdraw that.

Q. You testified at the Lockwood Investigating Committee, Mr. Robertson?

A. No, sir.

Q. You know that Mr. Evans did?

A. Yes, sir.

Q. You discussed matters of policy with him before and after he testified?

A. No, sir.

Q. You read his testimony, of course?

A. I read it in a general way, yes sir.

Q. I will ask you if you remember reading this statement from Mr. Evans, and if you endorse it, as president of this corporation:

"After all, the question of whether we made money or lost money is a matter for our board of directors and it does not concern the public. The reason I believe that these companies should be allowed to invest in anything they please is because their capital is their own and they are in no different relation to the public than anybody who sells any other kind of commodity. I claim the unlimited right for our companies to invest in anything that the board of directors thinks profitable without restriction."

Mr. Folonie: What is the interrogating part of the question, please, Mr. Blume?

(Question read by the reporter.)

Mr. Folonie: I will ask that the witness separate his answer so we may make objection, first as to whether he [fol. 1683] read it or not, and then we wish to make objection——

The Referee (interrupting): The two questions, first as to whether or not you read that testimony?

A. Yes, sir.

Mr. Folonie: Now, as to the second part of the question, as to whether he endorses it or not, we object to that as immaterial and as not proper, to impeach the witness by mere opinions or views, but whether he believes the business is affected by a public interest or not.

Mr. Barker: I didn't ask that question.

Mr. Folonie: That is what it asks for, in substance, whether it is so affected or not is a matter of law and not of opinion of the witness. If it is—his concurrence or non-concurrence with the views of another are immaterial; and also that it departs entirely from the theory of the Missouri statute, which is that the underwriting profit or loss of the companies be ascertained with respect to the period of five

years from 1917 to 1921, inclusive; that a proper inquiry is limited to the question of the experience of the companies in the State of Missouri during that period.

The Referee: In effect, that portion of the question which is merely an inquiry as to whether or not the doctrine announced in that portion of the question which purports to have been quoted from Mr. Evans' testimony is a doctrine in which this witness believes, the objection is overruled. He may answer.

(To which action and ruling of the Referee plaintiffs by counsel then and there at the time duly excepted and still except.

[fol. 1684] A. Generally speaking I think that is sound.

Mr. Barker:

Q. Now, the theory of insurance, Mr. Robertson, is that all the expenses incident to the business, and losses, are figured in ascertaining what is a proper rate or not, I take it, —among other things, of course?

A. Yes. Those items are taken into consideration.

Q. Yes, sir. Now, in case greater losses occur, greater expenses are incurred, there might be times when the rate would have to be higher to meet those losses and expenses. Is that not true?

A. There are times when the rate should be higher.

Q. That is what I mean.

A. But in many cases it is impossible to adjust the rate to meet a temporary condition. You have to take a longer period of time than a matter of two or three years. Five or ten years is the better basis for comparison.

Q. And in case of conflagrations, for instance, after the conflagrations in times past I am speaking of now, the rate was uniformly increased to take care of those extraordinary greater losses, was it not?

A. I don't know whether it was uniformly done or not. In the case of certain conflagrations that I do recall particularly, those of Chicago and Baltimore, it is my recollection that there was a rate increase, yes.

Q. And that was for the purpose of taking care of the extraordinary loss you refer to?

A. Not so much that as to take care of the probability of similar occurrences in the future. The loss was a matter of history and we couldn't recoup that loss from future premiums.

Q. Well, if you increase your premiums sufficiently to take care of that you would have recouped, would you not? [fol. 1685] A. You would, but that wouldn't be the way that I would figure it. I would figure that your increase was entirely to take care of the future.

Q. Do you remember the conflagration in Baltimore in 1902?

A. Yes, sir.

Q. Did not your company immediately after that increase its rates generally throughout the United States, on a basis of 10 per cent?

A. I don't know. I was not with the company and don't remember the circumstance.

Q. Don't you know that that was kept in force for twelve years afterwards, and the increase would have paid for fifteen Baltimore fires?

A. I don't know, sir.

Q. A conflagration is a stimulus to business, is it not?

A. It has that effect generally.

Q. Now, are you familiar with the testimony of Mr. Henry Evans, chairman of your board, given before the New York commission in New York City in 1910? In speaking of that, he says: "I don't care anything about a $2,500,000 fire or a $3,000,000 fire. Just as soon have it or not. It would put so much business on my books and put rates so high I would make it up." Are you familiar with that statement?

A. No, sir.

Q. Is that statement true, according to your judgment as an insurance official?

A. It is true just to this extent: That as a general principle anything prior—a conflagration, if you please, stimulates business. It is an object lesson to the people to cover property that is uninsured and to increase the insurance on property that is under-insured and it helps out incidentally, and I think that is probably what Mr. Evans had in mind when he made that statement. I don't undertake to [fol. 1686] interpret his thoughts at this time, but that is

just my reaction at this time—the thought that the general effect would be stimulation of business, but I know my own experience, that there has never been any joy in our office when we have had several million dollars to pay in a conflagration. I think that that is the test.

Q. Now, of course, the entire expense of losses, and your expense must in the end be borne by the policy-holders?

A. Yes, sir.

Q. Regardless of whether your expenses are high or low, they must be borne by the policyholders?

A. Unless we have a failure and go out of business, as a great many companies have done, then it is borne by the stockholders.

Q. That is right, but as long as it is a going concern like your company, with an enormous capital and surplus, the expense, regardless of whether high or low, must of necessity be paid by the stockholders?

A. No, I don't agree with that, because we get the same rate as other companies that may be operating at a lower expense ratio and this excess expense, whether the percentage be 5 or 10 per cent, comes out of our earnings. It is borne by us.

Q. By your stockholders, you mean?

A. Eventually, yes.

Q. But your view of insurance is, is it not, that all the expense must be passed on to the policyholders?

A. That is the general theory, yes, but I was giving you the working of it.

[fol. 1687] Q. Yes. And all losses which you pay must be paid by the policyholders?

A. Yes, sir.

Q. So it is immaterial to you whether you have great losses or small losses, is it not—as a business proposition?

A. No, sir, it is not.

Q. Why?

A. It makes a difference between profit and loss.

Q. You increase to take care of your extraordinary expenses, don't you?

A. No, sir.

Q. Don't you know that you got an increase of 15 per cent in Missouri in January, 1920?

A. January, 1920?

Q. Yes, sir.

A. I thought that increase was 10 per cent.

Q. 15 per cent, Mr. Robertson.

Mr. Folonie: Assume it for the purpose of your answer, anyway.

A. I have a recollection of that—something along that line.

Mr. Barker:

Q. That 15 per cent as secured for the purpose of taking care of extraordinary expenses or losses, I assume?

A. It was secured to provide for the exceptionally unfavorable record of the State of Missouri, as I recall it.

Q. Increased your premiums in Missouri, did it not?

A. Oh, yes, of course.

Q. Now, you know, Mr. Edwin Milligan, president of the Phenix Hartford Insurance Company, don't you?

A. Yes, sir.

[fol. 1688] Q. Mr. Milligan is an authority, likewise, in the fire stock world, is he not?

A. He is so regarded.

Q. Very able insurance man?

A. I consider him such.

Q. Are you familiar with his statement before the same commission in New York in 1910 with reference to this subject we are talking about, in which he says: "Speaking for the company—for the fire insurance companies—I should say that the reduction of the fire waste would not be a profitable thing. I think that as a business fire insurance is conducted by companies, like the one I represent, with most satisfaction and with larger profits in the years when fires are plenty? A good number of fires means a good premium account." Is that sound logic in the insurance world?

A. You have asked another question.

Mr. Leahy: Wait a minute. There are two questions there.

A. I am not familiar with the statement.

Mr. Barker:

Q. Well, having read it to you under the authority of Mr. Edwin Milligan, do you endorse it, or not?

Mr. Leahy: We object to the authority from Mr. Milligan. It is read from some pamphlet there.

The Referee: Let the question go, to the extent of assuming whether or not this witness believes the doctrine so enunciated, without regard to who enunciated it, is a sound doctrine.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 1689] A. I do not consider it sound doctrine.

Mr. Barker:

Q. You disagree to that extent with Mr. Milligan?

Mr. Leahy: We object to assuming Mr. Milligan ever said any such thing. He said he regards it as unsound. That answers the question.

Mr. Barker: Oh, no. I have a right to take all the insurance publications and interrogate the witness as to what he thinks of them.

The Referee: The objection goes as to the correctness of the pamphlet, that Mr. Milligan made the statement in question. As far as I know, there is no proof that that is a correct excerpt of Mr. Milligan's testimony or statement.

Mr. Barker: That is true. For the purpose of this examination, assuming that Mr. Milligan made this statement, you don't want to endorse it, is that what you mean?

A. I don't agree with it, sir.

Q. Are you familiar with the New York Insurance Commission report referred to by the witness Buswell of the Home, yesterday, as the American committee report, in 1910, Mr. Robertson?

A. No, sir.

Q. Is it your theory that the insurance, the fire insurance loss in the United States and Missouri could be reduced substantially if you inspected your risks more carefully?

A. Theoretically, yes. Theoretically they could be reduced by a more careful inspection, yes.

Q. That is why the mutual companies and the reciprocal companies have so few losses, as compared with the fire stock companies, is it not?

[fol. 1690] A. I wouldn't agree to that general characterization of there having so few losses. I have—taken as a whole I think that the mutual companies and the reciprocal companies probably have as high losses, as high a loss ratio, I should say, as we do, maybe higher.

Q. You know, do you not, as a matter of fact, that their expense ratio is less than one half of the expense ratio of fire stock companies in the United States?

A. I know that it is very much less; as to the exact proportion, I don't know.

Q. Do you not know that their loss ratio is much less than 50 per cent under the loss ratio of fire stock companies?

A. No, sir. I don't know that.

Q. You don't know that?

A. No.

Q. You know also, do you not, that the mutual companies return about 25 per cent of the premium to the policyholder at the end of each year?

A. I know that some of them return a substantial amount, whereas a great many others call for assessments.

Q. You followed the Lockwood investigating committee, naturally?

A. In a general way, yes, sir.

Q. You read this report, I assume?

A. Yes, sir.

Q. Do you remember reading this statement and do you agree with it: "The mutual companies return to their policyholders an average of 25 per cent on the proportion of the premiums written by them, besides accumulating large surpluses out of their profits"?

A. I don't remember reading that and I do not agree with it.

Q. Did you read this report of the New York Insurance Commission in 1910 along the same line we are talking [fol. 1691] about, and do you agree with it: "Against that we have a certainty that the fire loss could be at least cut in two, that there could be not only a saving of $100,000,000 a year in property now destroyed, but nearly as much more insurance expense, certainly hundreds, perhaps thousands of lives saved and a world of worry and suffering"—if instructions were made. Did you read that and do you endorse it?

A. Will you allow me to answer that question in my own way?

Q. Absolutely.

A. I did not read it, and I endorse it to a limited extent. I think the fire loss could be reduced by more careful selection of risks by inspections, but the great trouble is the inherent carelessness of the American people. That causes more losses than anything else.

Q. But is it not true, Mr. Robertson, that the reason there has not been more rigid investigation in the selection of risks is that insurance in a sense—fire stock insurance, has been in the past written on the theory of cost plus—that is, you just figure the cost, regardless of what it is, and pass it on to the policyholder; isn't that true?

A. No, sir.

Q. That is not true?

A. Not in my opinion, no, sir.

Q. Is there any reason or incentive for a fire stock company more carefully selecting its risks, or more proper inspection? Is there any reason for it?

A. Why, I think there is every reason for it, except the rather insuperable obstacle of expense. That is the thing [fol. 1692] that prevents us from making more inspections than we do. If we made as many as we would like to, we would have to raise the rates considerably.

Q. You understand that each risk written by the mutual and reciprocal company is carefully and properly inspected?

A. No, sir, not in all cases.

Q. If they did do that they ought to have considerable lower rates than you charge, should they not?

Mr. Folonie: We object to the comparison as only misleading and leading into a controversial field.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. The mutuals that are being used as an illustration, as I understand, are the so-called senior and junior fac-

tory mutuals of New England, where there is a very careful inspection of risks, selection, and every known device to prevent fires; and there is a close community of interest between the company and the assured, and in that special field they have been successful in their operating the mutual plan, which is theoretically sound but not practically workable except in certain lines such as the sprinklered textile industry. That is my opinion on that.

Q. And for the extra services which they render of frequent inspections and so forth as just defined by you, do they receive a higher rate than the stock fire insurance [fol. 1693] companies?

A. I think that their rate is slightly higher and that they give back—the policyholders get back a dividend, and there is also this difference and distinction as I see it: That it is a mutual proposition, and there is little, if any, commission to the agent. It is built up on an entirely different plan from ours. A larger plan of operation I don't think would be practicable for general operation the country over. In certain specialized industries it can be worked and is being worked successfully.

Q. But your company proceeds under a system—provides no system of inspection compared with theirs, do you, Mr. Robertson?

A. Our inspections are not nearly so widespread as theirs, in proportion to the number of risks. They have a limited number of rates and they send around inspectors often; sometimes twice a year on the same risk. But we do a tremendous amount of inspecting. We maintain corps of men who do nothing else; our field force is making inspections every day of the year, and in addition to that we have a large engineering department that costs the Continental, I suppose, $100,000 a year, whose chief function is to make inspections and suggest changes that will not only reduce fire risks but actually reduce the rate on the property.

Q. Just another question, please, Mr. Robertson. In arriving at profit and loss in your business in Missouri to which you referred a few minutes ago, you naturally consider your direct expenses in Missouri and then your general expenses throughout the United States, of which a certain portion is charged to Missouri, do you not?

A. Yes, sir.

[fol. 1634] Q. Now, if the general overhead expenses, which are chargeable to a certain extent to Missouri, were high one year and low the next year, that would be reflected in the Missouri situation, would it not, and Missouri would be charged in proportion?

A. It would only reflect in the Missouri situation as far as we are concerned. It would not affect the policyholders of Missouri, as I see it.

Q. The question, then, as to the reasonableness of those general expenses which are allocated to the state would be quite a factor in determining whether there was a profit or loss in Missouri, would it not?

A. Yes, it would be a factor; not a very large one.

Q. Well, if, for instance, $10,000 should be allocated to Missouri when only $1,000 should be allocated, it would make a difference of $9,000?

A. Well, there would scarcely be any such fluctuation as that. It would be very trifling.

Q. So that for the purpose of evidence, your company—do you desire to submit any as to the reasonableness of the charge which you allocate to the State of Missouri for your general expense?

A. I have no information at hand about Missouri, because it is one of 48 states and that business is handled primarily by our western department and I presume that they have made returns for Missouri, to your body.

Q. You don't know whether there has been any duplication in expenses charged to Missouri or not?

A. No, sir. I should not think so. Our figures are balanced figures. If there is any mistake we find it.

[fol. 1635] Q. And as to whether or not the charges which have been apportioned to Missouri are reasonable or unreasonable, you don't know?

A. I haven't looked into that, naturally.

Q. Are you familiar with the question of over insurance? Have you had much trouble with that?

A. Not a great deal of trouble, no, sir.

Q. Have you observed the chart prepared by several insurance companies, among the Glen Falls Company, showing the enormous over-insurance paid throughout the United States by persons over-insuring their property? Have you seen those charts?

A. Yes, I have seen those.

Q. And they reflect the spirit of incendiarism and show the amount of arson and over-insurance throughout the country, do they not?

A. Yes, sir.

Q. Now, do you think it is fair for yours and other companies to recognize that situation and make no effort to control it?

A. I wouldn't think it were fair if that were a proper statement of the facts. Now, nobody in any business could strive any harder against over insurance and incendiarism than we do, both through the company and through the National Board of Fire Underwriters. That is one of the most important subjects we have.

Q. And it is occasioned entirely through the negligence and carelessness of insurance companies, is it not?

A. No, sir.

[fol. 1696] Q. If your company were careful, watchful and prudent, you would avoid most of it, would you not?

A. We could only avoid most of it, as you say, by having many more inspectors and many more inspections at a much greater cost, which would raise the rate and premiums for insurance.

Q. So that under the present charge or rate which you receive there is no way you can prevent that?

A. Not absolutely. We do a great deal to keep it down and we save a great many losses through these inspections.

Q. Now, if you provided other inspectors and made greater inspections, wouldn't it necessarily reduce your loss ratio?

A. To some extent, but you must realize this, that the number of people who are actually guilty of arson is a very small percentage; I wouldn't undertake to say how small, and if we undertook to find the people who might be guilty of arson we would have to inspect most of the business we have, and that would be at a tremendous cost.

Q. But wouldn't your loss ratio reduction more than pay it?

A. I don't think so.

Mr. Barker: I believe that is all.

The Referee: Just a moment.

By the Referee:

Q. Mr. Robertson, I understand from the testimony you have given relative to this topic that in your judgment the saving which might be effected by a more rigorous system of inspection would be balanced or over-balanced by the increased cost of such inspections?

A. Yes, sir.

[fol. 1697] Q. Have you any fact or anything else in the experience of insurance companies in your knowledge upon which that opinion is based?

A. I can only give you a very rough approximation. Assuming that we now inspect 10 per cent of our risks, which are the total cost for inspectors and their expenses, I can easily multiply that by 10 and I think I would get a result which would be much higher than any loss saving that I might make as a result of those inspections.

Q. Do you know whether or not there is a substantial uniformity in degree and quality of inspections made by the various stock fire insurance companies?

A. There is no uniformity. Each company does along the lines of inspecting what it considers right. We think that we follow that more closely than most companies, but possibly not as closely as some of the small companies who operate in a limited area where inspections can be made very cheaply, compared to our expense for inspections.

Q. As I recall it, there has been some evidence in this hearing with reference to certain companies to the effect that they inspect quite rigorously—certain stock fire insurance companies. I have in mind now the Glen Falls. I take it from what you have said that there is a considerable variation between the degree or rigor of the inspection of different companies?

A. Yes, sir.

Q. Now, generally speaking, what is the effect of that in the matter of the losses incurred and profits earned by those companies that you have observed?

A. Well, that is very important, and we have tried to figure it out for our own satisfaction, and I haven't been [fol. 1698] able to trace much difference in the record of the so-called rigorous inspecting companies and those who follow inspections with more moderation, you might say. There are, however, companies that inspect practically

nothing and their loss ratio appears to me to be a little higher than the companies that make a reasonable number of inspections, say, for instance, 10 per cent.

Q. The conclusion from that, then, would be, would it not, that such difference as exists between the inspection method of different companies is negligible, so far as results are concerned?

A. Practically negligible, yes, sir.

Q. A few moments ago, gentlemen, there was handed to me a letter from Mr. Kurth, who was upon the stand at his hearing a few days ago, containing a statement of salaries, which I submit for your consideration now.

[fol. 1699] Cross-examination by Mr. Folonie:

Q. With respect to the subject matter of inspection, if your company, to take an extreme case, had one risk in a village or on a farm somewhere in Missouri remote from any place where you had a representative, and the premium on that was five dollars, and the railroad fare and the salary of an employe whom you could send and inspect that risk, would exceed the amound of the entire premium derived, then in the exercise of your judgment would you send—you would not inspect such a risk as that?

A. We would not accept that risk if it required inspection unless the assured were willing to stand the cost of inspection.

Q. And the subject matter of inspecting and not inspecting is a matter to which you apply the judgment of your company and its officers and employes and agents in determining whether the amount of risk and the perils incident to the character of property involved warrant or seem to require an inspection, or the contrary?

A. Yes, sir.

[fol. 1700] Q. Now, do the mutual companies, of whom you spoke, who make quite rigid inspections, do they necessarily—and I am speaking generally now and not perhaps with reference to some particular exception—do they in general inspect risks such as private dwellings and household furniture and various kinds of property of that kind, which you insure?

A. I am under the impression that they do not.

Q. Does the necessity and desirability of an inspection and the propriety so far as loading of premiums with expense for inspections, vary with the character of the risk and the location, the amount involved, and the likelihood of its destruction; are all those elements taken into account?

A. Yes, sir.

Q. In the case of a mutual company, broadly speaking, the policyholders are also the stockholders or partners in the venture, are they not?

A. Yes, sir.

Q. And the amount paid by mutual fire insurance companies in the way of returned premiums in a rough way bears some relation to the dividends paid to stockholders in a stock company?

A. That is correct.

Q. Mutual companies are not organized for the purpose of profit for those originating the venture outside of the policyholders themselves, are they?

A. The theory of mutual insurance is operation without profit.

Q. Do mutual companies have any recourse in the event that they happen to pay too much to their policyholders, so that when a conflagration comes along they are unable to out of the funds at hand, pay the losses, the amount of their claims, do they have any recourse to anybody to make up [fol. 1701] any deficit they find to make up?

A. Most assuredly; that is the basis of mutual insurance companies, if the premiums are not sufficient to pay the losses an assessment is in order.

Q. And therefore the policyholder has the contingency all the time that if extraordinary losses and expenses happen during a given period, he may have to pay not only the amount he has originally paid, but an additional amount?

A. Unquestionably. He insures himself to some extent, and also his neighbor.

Q. The stock fire insurance plan is on a basis of a definite amount paid, which shall be all the obligation of the policyholder as far as payment for indemnity is concerned?

A. Yes, sir.

Q. Directing attention to your company in particular, you mentioned the contributions to capital. Were there any contributions to surplus by your stockholders by way

of direct payments into the treasury, as distinguished from leaving earnings in the treasury?

A. I don't know, unless it is in that statement. I have this history gotten up for that purpose.

Q. You may state if you can.

A. We have a history of 70 years and a good many things have happened in that time.

Q. Your memory does not go back that far, of course?

A. No, sir (examining document). I don't know about that. I haven't any figures at hand.

Q. Now, your company keeps its activities, respecting its investment business and its underwriting business, distinct in a more perfect way than some of the other companies; [fol. 1702] and with a view to giving us a more exact understanding of the relation of the expense of one activity as compared with the other, for comparison with the record of other companies, can you state what the expenses of your investment part of your business was during the years 1917 to 1921? Have you those figures here?

A. No, sir; I haven't those figures. The notice was so short that I could only gather up a few things. I might say that it is only a very small fraction. I am under the impression that it is a very small fraction of one per cent.

Q. You think those figures—you have those figures in separated form, that is separating your expenses in investments absolutely from your underwriting records, have you, on your records?

A. Oh, yes; yes, sir.

Q. Will you send to the court here a statement of what the actual expenses of your company were during the years 1917 to 1921, inclusive?

A. Yes, sir.

Q. Giving it year by year?

A. Yes, sir.

Q. Have you records showing the underwriting experience of your company with respect to underwriting profit and loss for 34 years past in your books and records?

A. Yes, sir.

Q. What has been the underwriting experience of your company for 34 years and to the present time?

A. I was looking at those figures recently. 5½ per cent, as I recall it.

Q. Profit or loss?
A. Profit.
Q. Underwriting profit?
A. Underwriting profit.

[fol. 1703] The Referee: Based on what?

Mr. Folonie:

Q. On what basis it that computation made?
A. On the basis of earned premiums, incurred losses and incurred expenses.
Q. And that is over this 34 year period you have on that basis made 5¼ per cent underwriting profit?
A. Yes, sir.
Q. Now, you have been asked several times about earned premium figures. As a necessary basis to arrive at the earned premium figures of your company, it is necessary first to know the written premiums each year, is it not?
A. Yes, sir.
Q. And the earned premium figure is deducted from that written premium figures?
A. Yes, sir.
Q. In other words, the written premiums are divided into earned and unearned parts, and that portion of writings which are, during a given period, earned, irrespective of the time when written, are the earned premiums, and the part still remaining to be earned is the unearned part?
A. Yes, sir.
Q. Now, you elaborate a little on the questions that the court asked you about the part that capital plays in your business—you are familiar, are you, in a general way, with the Lloyds underwriters?
A. Yes, sir.
Q. Do the Lloyds underwriters have any capital at all?
A. They do not. They have subscribers who are responsible for 15,000 pounds, some of them; some 50,000 pounds and some 5,000 pounds, and that money is subscribed and paid in. Then they agree to stand for another amount, which is higher, in the case of unusual disasters, which they may be called on to pay.
[fol. 1704] Q. Now, in the case of foreign companies, there are quite a number of foreign companies parties to this suit, I should say in large part English companies. Are

you familiar with the fact that when they enter and do business in this country they make a deposit, usually in the state of New York?

A. Yes, sir.

Q. And that is all the money by way of capital and surplus that they have in this country by way of a deposit or equivalent of capital, is it?

A. Ordinarily they exceed the legal requirements by building up.

Q. And do those companies usually retain moneys in the United States which they refrain from remitting to England, which they keep in the treasury of the company in this country?

A. Many of the larger ones do.

Q. And is that governed by any fixed standard, or does that vary with the inclinations of the different companies?

A. So far as I know, they are free to keep as much as they desire, so long as they meet the legal requirement of $200,000.

Q. And is the amount of the business done by those foreign companies as compared with American companies reflected or to be measured in any way, do you think, by the amount of their deposit or the amount they retain or have here?

A. Well, to some extent.

Q. Well, what?

A. A larger capitalization, a larger statement of American assets, naturally gives them more prestige with their agents and with the public.

Q. In other words, it is a question of prestige rather than a use of the money in the business, so far as the underwriting activity is concerned?

[fol. 1705] A. Yes, that is true. The money is on hand and the fact that it can be used in case of conflagrations lends confidence.

Q. What I was seeking to get at, and you can elaborate on it in any way you see fit, is the amount left on deposit here by them a matter of inspiring confidence, or is it a matter of using it in their underwriting activities as a direct means of producing income?

A. I think the idea in holding these American assets to a fairly high figure is principally to inspire confidence.

Q. Do the assets of the company, so far as the capital is concerned, in particular, for a moment—does it enter directly into the conduct of the underwriting activities of the company at all?

A. The capital of the company in many cases is rather a minor consideration. I have in mind particularly the Globe Rutgers, if I may use an illustration, which until very recently only had $300,000 capital, but a very large surplus, 18 or 19 million dollars. The strength of that company in the insurance world was not based on its capital but chiefly on its surplus.

Q. Now, with respect to a consideration of capital and surplus entering directly into the underwriting, I wish you would discuss the difference, if there is any, between an insurance corporation and a mercantile concern, say, which takes its capital—we will say a dry goods company—and takes its capital and invests it in dry goods, sells the dry goods, reduces them to money, then it takes that money and buys more dry goods and again sells them. Does the capital of an insurance company enter directly into its business of underwriting in the sense that a mercantile corporation uses [fol. 1706] its capital, and, as the expression is used, turns over its capital?

A. No, not in that sense. The dry goods concern has to buy certain supplies and incur certain expenses, and it goes through the year, makes its profit or loss, and it declares a dividend.

The next year may be a lean year and they couldn't pay a dividend, probably, without resort to the surplus, so a portion of that surplus is used to make up the dividend to stockholders. But in the case of a fire insurance company the capital, of course, is the starting point. Many companies pay in the surplus, too, in the beginning, because that has been found wise, and so far as it is humanly possible the surplus is nursed along; increased as much as possible, because the management is progressing. They want to get into bigger things. They want to be able to do a larger business, and by building up a larger surplus they could assume, for instance, a much larger total liability, as we say, in the city of Boston.

Many companies, ourselves being one, have what they call a conflagration engineer, whose duty it is to check up the total liability in any given territory or area, so-called

congested value area, that might be swept by a single fire or conflagration. Now, as the company grows, builds up its surplus, it feels that it can reasonably afford to transact a larger business and secure a larger premium income in the large cities, and in addition to that, as it grows it can assume a larger line on any given risk. For instance, on a fire proof building, I would not hesitate at all, if conditions were right to write in the Continental $250,000 or $300,000 [fol. 1707] on a fireproof risk. Smaller companies could not afford to take that chance.

And then in addition to that, the management of a high grade progressive company is always thinking of its responsibilities in this business, being able to pay its claims 100 cents on the dollar, and be able in case of emergency to meet those claims, and if we have an enormous surplus, why, we are secure, our agents feel secure, and the assured may feel secure.

Q. Is that why you refrain from dividing up your surplus among stockholders in the form of dividends, and use up your surplus this way—is to make that a continual fund for the security of everybody concerned?

A. Without question.

The Referee:

Q. Then, generally speaking, the larger the total amount of the fund arising from the capital stock of the company, combined with the surplus of the company, the larger the volume of business which that company is capable of doing?

A. Yes, sir; that is correct. The capital plus the surplus is called the policyholders' surplus.

Q. And for the reason that you have just given that is true both of the investments and of the underwriting end of the company's business, is that correct?

A. I don't get your line of thought there.

Q. Well, I understood from what you were saying a moment ago that because of the greater confidence inspired by the possession of a larger capital and a larger surplus the volume of business, in the underwriting business, would be increased.

A. Yes, sir.

[fol. 1708] Q. And also, of course, you would have larger sums of money to invest in the investment end of the business?

A. Yes, sir.

Q. So that the possession of a large capital and a large surplus is beneficial to both ends of the business?

A. Oh, without question.

Q. Yes; inspires public confidence in both ends of the business?

A. Yes, sir.

Q. And reaps larger profits for those who ultimately share in the profits arising from both ends of the business?

A. Yes, sir.

The Referee: That is all.

Mr. Folonie:

Q. Now, to see what happens to surplus. If you materially increase the business, if the company starts with $200,000 capital and $200,200 surplus, and does, writes new $500,000 worth of premiums—of business—productive of 500,000 worth of premiums in a given year, would you anticipate that at the end of the year in which that writing was done that the surplus would, at the end of that year, still remain $200,000, or would it be depleted?

A. The surplus would be wiped out and the capital impaired in that case.

Q. In other words, by doing that amount of business you would have no surplus at all and your capital impaired besides?

A. Yes, sir.

Q. Now, suppose you did instead of $500,000 worth of business, that you supposed you did a million dollars worth of business that year, what would be the effect on capital and surplus?

A. The result of that would be so tremendous that you would probably be put in the hands of a receiver right way.

[fol. 1709] Q. Well, now, why, if you write a larger amount of business and you are getting in a lot of these premiums—I am assuming you are taking your risks with some reasonable regard to the usual customary charge for them—and you are taking in money all the time, why hasn't your surplus increased instead of decreased during that period?

A. Well, if I understand you——

Q. (Interrupting.) I am asking now for your reasons. Why would it go to decrease surplus instead of increasing it?

A. Well, for the simple reason you have assumed an obligation that you haven't carried out. You can write a tremendous amount of business in the early part of the year and your loss ratio would be very low, and apparently you would be making money; but as soon as those policies are in force you are liable to have to pay losses under those policies, and consequently it would be no true showing of the company unless you put up reserve against those policies to take care of such of them as might be canceled or in the event that the company was liquidated at any time, that you would have money to buy reinsurance in another company and turn over your liabilities and go out of business.

Q. To bring that thought out, first, to compare two companies, both starting with the same amount of capital and the same amount of surplus, and one company writes twice as much business as the other company, which of those two companies will have the larger surplus, the one that writes the larger amount of business or the one that writes the smaller amount of business?

A. The one that writes the smaller amount of business. [fol. 1710] Q. If it were undertaken, therefore, to compute the underwriting profit by disregarding volume of business and undertake to make it by taking the percentage of capital and surplus, the result would be that the company which wrote the least business would show the larger surplus and therefore would get the largest amount of money?

A. Yes.

Q. Do you think that it is logical and proper, from a just consideration of the character of your business, to undertake to calculate underwriting profits—I am disregarding the volume of business transacted, for the moment entirely—to calculate the amount of underwriting profit just to be derived by a company by calculating a percentage of capital or percentage of capital and surplus, and thus seek to arrive at a just and proper underwriting profit—or profit from the business or conduct of insurance?

A. Your profit should be based on the earned premiums written, if I understand the question.

Q. Well, I am asking you really the inverse of that, whether in your judgment it would be proper to abandon that theory and calculate your profits instead upon capital and surplus, upon regarding the amount of business done?

A. If you depended upon this theory, that it was sound, you would be absolutely lost in underwriting.

The Referee: Suppose we adjourn until 1:50.

(Whereupon an adjournment was taken until 1:50 o'clock p. m. of the same date, at which time parties reconvened at the same place and the following proceedings were had:)

[fol. 1711] Mr. Folonie:

Q. Counsel asked you about making an arbitrary charge of 15 to 40 per cent for expenses when your premiums came to hand. Do you make any arbitrary expense charges as you keep your records, or do you charge your expenses as they are incurred and paid?

A. We charge most expenses as they are paid. Some expenses, such as taxes, have to be remitted and charged up for the time being, and then if there is any correction it is corrected the next year. We make no arbitrary charges, however.

Q. Directing attention to this Lockwood inquiry that has been mentioned here several times, that inquiry was directed to the housing problem, was it not?

A. Yes, sir.

Q. And as an incident to the question of why there were not enough houses for people to live in the inquiry drifted into the subject matter of why insurance companies should not loan more money on houses so people could built more houses. Wasn't that the way it came about?

A. The suggestion was made that if they loaned money out on mortgages if they would buy improved property that it would improve the situation.

Q. And I suppose, like this hearing, and all others, it probably spattered over a good many things that were really outside of the inquiry?

A. Yes, sir.

Mr. Folonie: No reflection on the court.

The Referee: No, obviously not.

Mr. Folonie:

Q. Do mutuals and reciprocals do business on what is known as the agency plan, which stock companies do business on, do you understand, in general?

A. To some extent they do; but to a great extent they [fol. 1712] do business direct with the assured; especially the reciprocals.

Q. In other words, they virtually insure each other, and the commission for securing or soliciting the business which you have in your agency system does not exist?

A. That is correct in the main.

Q. I am asking in general.

A. In general, yes, sir.

Q. You were interrogated with respect to inspections and the reduction of hazards and the character and the conditions of inspection. Inspection itself, unless there is a correction of the condition, the inspection itself does not correct anything, does it?

A. No, sir.

Q. And it is only in the event that an inspection is followed by a correction of a condition that the inspection serves a valuable purpose in your business?

A. Yes, sir.

The Referee: That, of course, refers to inspections subsequent to insurance.

A. Yes, sir.

Mr. Folonie:

Q. Directing attention to inspection, primarily, previous to taking on risks, I will ask you whether a rigid inspection as to risks of where there is a shifting property, such as a stock in trade or warehouse contents, where goods are being shipped in and out of the warehouse, whether it serves in all cases as of value?

A. It would prove of little value unless it could be brought, repeated very often, as often as once a week in some cases.

[fol. 1713] Q. I am so far in the questions I have been asking been assuming the case of the honest policyholder. Now, in the case of a dishonest policyholder, if your inspection disclosed property present of the value for which

insurance was applied for, and the dishonest policyholder sought artificially to remove the property from the premises before the time of a dishonest fire, would the element of inspection, so far as inspection of the property is concerned, there be of any value against dishonesty?

A. No, sir. An inspection would be no safeguard against dishonesty.

Q. Does the moral hazard of the persons insured enter into the calculations and method of doing your business?

A. The moral hazard is something that cannot be covered by any rate. If there is any element of moral hazard, we decline to insure the risk.

Q. In other words, if it is your belief that the person is dishonest in his general dealings and that comes to your knowledge, why, you would not insure him whether he has value or not?

A. No, sir. We decline it absolutely.

Q. And is that a material factor in your determination of expenses and retention of risks?

A. Yes, we turn down a good many risks because the assured himself is unacceptable, just as a man of poor character couldn't get a loan at the bank.

Q. Is the proposition of persons who take policies of insurance with a dishonest intent to have incendiary fires, is that a large proportion of the losses which are suffered by your company?

[fol. 1714] A. Why, that is always a matter of opinion and estimate. My own idea is that less than five per cent of the losses can properly be classed as moral hazard losses. There are other losses due to careless housekeeping that partake of that moral hazard, but are not exactly moral hazard losses.

Q. In other words, you distinguish between conscious dishonesty and a recklessness which may cause loss without an intent to produce a loss and collect insurance?

A. Yes. We distinguish against it and try to avoid both causes—as far as insurance is concerned.

Q. In your judgment, an inspection more rigid, more rigid than that which you have in fact would result in an expense greater than the savings which you would make in your losses by reason of that inspection?

A. Yes, sir.

Q. And do you attempt to make inspections and expend money for that purpose so as to eliminate them to the extent that you believe you can prevent losses of equal amount? In other words, do you undertake to use your money for inspection where you believe that it will be resultant in eliminating losses of larger volume than the money you are expending for prevention?

A. I don't know that we ever considered it in just that way—but we have——

Q. (Interrupting.) Put it in your own way, then.

A. But we have always been close inspectors, with the idea of avoiding risks of severe physical hazard as well as moral hazard, and with the additional idea of the moral effect on the agent; let him know that we are checking up the business he is giving us, because the agent, after all, [fol. 1715] does 90 per cent of the collecting, and if we are close watchers of our business, if he has got some risk that is not quite up to standard, he will put it in some company that does not watch it quite as closely as we do.

Q. And put it in a mutual or reciprocal?

A. Possibly.

Q. Does the valued policy law, in states where the valued policy law exists, does it in your judgment have any tendency to produce over-insurance and dishonesty?

A. We think it does; a very material influence.

Mr. Folonie: That is all with this witness.

Redirect examination by Mr. Barker:

Q. Now, then, if an agent gets a very bad risk he puts that over into mutuals and reciprocals, you told Mr. Folonie?

A. I said possibly.

Q. And that is why the mutuals and reciprocals have such a greater loss ratio than your company has, and other stock insurance companies?

A. Not necessarily.

Q. Do you know they don't have ½ the per cent loss ratio that you do have?

A. I don't know that; no, sir.

Q. Well, if they get all the bad risks, how does it happen they don't have more losses than you do?

A. You are basing your entire argument on the possibility. I said, "possibly."

Q. Oh, then you don't want to say the mutuals and reciprocals take risks that you wouldn't have?

A. I not only don't want to say it, I did not say it.

[fol. 1716] Q. You have testified they were more careful than you are, haven't you?

A. You are talking about hundreds of different companies that are handled in various ways. I particularly said, if I recall my testimony correctly, that the so-called senior and junior mutuals that operate in the textile districts, especially the New England, are careful inspectors and then in addition to that, there are many others, and reciprocals are entirely different from mutual companies.

Q. They get the bad risks, also, that you wouldn't take, don't they?

A. Not necessarily; some of them.

Q. They get rid of them pretty quickly, too, don't they?

A. I don't know. I have never observed that closely enough to know.

Q. Don't you know there is a monthly inspection by reciprocal companies of every risk they have in the United States?

A. I don't think that is true, sir.

Q. Don't think they have monthly inspection?

A. No, sir.

Q. Now, then, you recognize, as the president of your corporation, that there is what is known as a corporate expense, which is an expense borne by the corporation, and an underwriting and investment expense, which is borne by the business, don't you?

A. Yes.

Q. Take for instance what would be your idea as to a banquet; say that your company or other companies would hold, whereby they would spend, as an illustration, $10,000. Now, is that charged as a corporate expense or an underwriting expense?

A. Well, I can't answer that, because I have never known of such a banquet being held.

[fol. 1717] Q. Don't you know of the insurance companies of New York within the last six years reporting to Missouri $400,000 banquet expenses? Including your company?

A. No, sir.

Q. But if they did that would not be a proper underwriting charge, would it?

A. It would be an incidental expense and relating more to carrying on the business—just as you might if you were in the mercantile business, you might entertain some of your out of town buyers.

Q. Don't you think the stockholders ought to bear some of those expenses, getting the enormous profits they do?

A. Well, it comes out of the stockholders.

Q. Well, take a contribution to charity, who ought to stand that, the underwriting activities or the stockholders?

A. We don't contribute to charity, except individually.

Q. Did you during the war?

A. I think probably there was some exceptions during the war.

Q. Well, is that a corporate or an underwriting expense?

A. I don't know just how you would make the distinction. It would be what we would call a general expense. I don't know just where you would charge it up.

Q. And would it be charged to the underwriting expense?

A. I don't know. I am not sure whether it would or not.

Q. Well, you know that the stockholders of the corporation should pay that, don't you?

A. Well, the stockholders would pay it eventually, be- [fol. 1718] cause it would be so much money that would otherwise have gone into the surplus; they would pay it without question.

Q. But in the first place, do you think it would be charged against the underwriting expense? Would it not?

A. Oh, a thing like that, in connection with a well managed company, would not be a flea-bite. It would be so small you couldn't figure it—in my opinion.

Q. Are you familiar with the report of the Lockwood investigating committee, which Mr. Folonie has called your attention to, to the effect that fire stock companies have losses of thousands of—have lost thousands and thousands of dollars in their speculative securities? You are familiar with that?

A. Yes, sir.

Q. Why do you invest in this dangerous form of security when you may invest in a security——

Mr. Folonie (interrupting): We object to assuming they invest in dangerous securities, because the witness has not said anything from which the assumption can be drawn.

The Referee: Witness can differentiate. Objection overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: You may answer the question, the court said.

A. Well, in the first place, we don't invest in the class of securities that you call "dangerous," and the record shows that we haven't so invested.

[fol. 1719] Q. You are familiar with your investments in a general way, are you, Mr. Robertson?

A. Very general way, yes, sir.

Q. You read this report of the Lockwood investigating committee on your company and others, did you not: "The line or curve of the income earned on bonds and stocks reflects the most extraordinary condition, showing earnings as high as 7.46 per cent in 1909 to as low as a loss of 55 per cent in 1917. This and similar operations tend to prove that the fire and marine insurance companies have invested their funds in rather speculative securities, entailing at times extraordinary losses." You read that report?

A. I think I have read that.

Q. And that is true, is it not?

A. No, sir.

Q. Now, take for instance, the year 1919, I think your company reports a loss in investments that year of $2,581,488. Is that right?

A. I will see if I have it here (witness examines documents). My figures here have nothing about the profit and loss on investments.

Q. I mean you do know as being president of this company that you suffered substantially that loss on your investments in 1919, don't you?

A. I don't remember the exact years. I will say this, though, that the market conditions were such in almost all stocks and a great many bonds that there will be years when there will be a shrinkage and other years when there

will be an increase as large as or larger than the shrinkage in the previous year, so that the average is the thing we would go by. We would be foolish indeed to invest in a way that would lose us money. You see, we are investing our own money.

[fol. 1720] Q. As a matter of fact, your own company, with Mr. Evans president of it, cornered the sugar market in 1918, didn't it?

A. I don't know that.

Q. Don't you know Mr. Evans has used the money of your own company for his own personal gain in cornering the sugar market of the United States?

A. No, sir, I do not.

Q. Would you think that Mr. Evans as the Chairman of your board or you as the president would have the right to take funds out of your reserve and use them for that purpose—if you returned it

A. I don't think that he would use any funds for any purpose that was not proper, and I don't think that he has done so.

Q. Would it be proper, I mean, for you or Mr. Evans to use the funds of your company to corner, for instance, the sugar market, if you returned it to your policyholders?

A. No, sir, absolutely not. We have a trust to our stockholders first. We are trustees.

Q. For the stockholders, or the policyholders?

A. Stockholders.

Q. Are you the trustee of the policyholders also?

A. No, sir.

Q. Have not trust relation with them at all?

A. We have a purely business relation with them, sir.

Q. And your investments in sugar cane stock in '17, '18 and '19 you are personally familiar with, you say?

A. No, sir.

Q. You don't know whether you owned a dollar's worth of that stock or not?

A. I know he had some stock in Cuba Cane; as to how much it was, I don't know. I was in a more or less minor [fol. 1721] position at that time and I had trouble of my own and I didn't know what was going on in the financial end.

[fol. 1721] Q. Don't you know that in 1917 in Cuba Cane, that Mr. Evans was a larger purchaser, as an individual?

A. I have heard that was true.

Q. And also used the funds of your company to purchase, along with his own funds?

A. Why, I am also of the opinion that we bought into Cuba Cane; as to how much it was, I don't know.

Q. And you took a tremendous loss as a corporation and Mr. Evans as an individual, who bought at the same time, took a tremendous profit, do you know that?

A. No, sir, I don't think it is true.

Q. You don't know that. Well, we will have some evidence on that. That is all.

Recross-examination by Mr. Folonie:

Q. Directing your attention to what counsel speciously calls banquets, do you know whether or not some fire insurance companies at their head offices furnish lunch to their employes so as to save the time of the employes during the noon hour?

A. Yes, sir.

Q. Does your company do that?

A. Only to the extent of providing luncheon for the officials.

Q. And not to the general employes?

A. No, sir, not the clerks.

Q. Are luches served to the employes in other companies?

A. The Home Insurance Company does it, and there may be others.

[fol. 1722] Q. And aside from the fact that your—where do your officers eat their lunch?

A. On the 25th floor in the special dining room in the same building.

Q. And aside from that do you—since you have been president have you had any knowledge of any so-called banquet?

A. Not one.

Mr. Folonie: That is all.

Mr. Barker: That's all.

(Witness excused.)

Mr. Folonie: Now, if you haven't made notes, there are two things we were asked to send in. One was the salary of officers and so forth. Have you got that?

Mr. Robertson: Yes.

Mr. Folonie: And the other was the amount of expenses on investments in 1917.

Mr. Robertson: Yes, I have that on the way right now.

Mr. Barker: Allow me to state to you, in case there may not be any misunderstanding between us, that what I want is the separate salary of the president, board of directors, chairman of your board, the officers of your corporation, including services for all purposes, and whether associated with an allied corporation or not, bonuses paid, commissions paid, allowances of all forms paid, so that it will show the total sum received by each on all forms of allowances, whether called salary or otherwise. Now do you understand me?

Mr. Robertson: Yes.

Mr. Folonie: Do I understand you want that separated so as to show it separately as to each person, showing who the person is and what that one received?

[fol. 1723] Mr. Barker: Absolutely.

Mr. Folonie: Then as I understand from the witness, that is inconsistent with his obligations to his company, who deem it contrary to the best interests of their company to furnish it in that form, and I direct the witness that he will be authorized to furnish it by furnishing it in combined form so as to show the aggregate as to groups of officers and employes, and that his counsel—if counsel desires to ascertain the separation by examination of books, without putting that separation into the record, I will ask the witness to furnish facilities so they may make such examination.

Mr. Barker: I would like to suggest, in answer to that, that the state takes the position that the burden of proof is on these insurance companies to show that this reduction is not a reasonable reduction, and in order to show that the burden is on the insurance companies to produce into this record, not in their home offices, their total expenses, their divided expenses, so that we may question the reasonableness or the unreasonableness of each charge

and the good faith of each charge and the apportionment made to the State of Missouri; and we will insist on the companies, and are insisting on them, doing that.

Mr. Folonie: We understand your position, with which we take very square issue.

That will be all, Mr. Robertson. Thank you.

By the way, there is one thing more I will interrogate you about.

[fol. 1724] Norman T. Robertson, recalled as a witness for further cross-examination on behalf of the plaintiffs, was examined and testified as follows:

Recross-examination by Mr. Folonie:

Q. There has been a request made for the presence of Mr. Henry Evans here, and we also have in the record an affidavit of his condition. How long since he has been down to his business, to your knowledge?

A. He has not been in the office for the transacting of business since the 25th of July. I checked up that date accurately. Prior to that time he has been practically incapacitated since early in January and away from town a good part of that time down in Florida, and in Hot Springs, Virginia, on two occasions.

Q. Not as a doctor, but in a general way, what is the character or nature of his ailment?

A. Why, I don't know that it has been specifically determined, but it is a nervous complaint that incapacitates him for business and moving around; has high blood pressure and he is really in a very serious state.

Q. And you think that his physical condition is such that it is impracticable to undertake to take his testimony at this time?

A. Oh, absolutely. It would be out of the question.

Mr. Folonie: That is all.

Mr. Jacobs: I would like to ask him one matter that I have never gotten quite clear on.

Redirect examination by Mr. Jacobs:

Q. Mr. Robertson, you testified, I believe, that you figured your underwriting experience upon the basis of earned [fol. 1725] premiums?

A. Less incurred losses and incurred expenses.

Q. Well, I say on the basis of earned premiums?

A. It starts from that, yes.

Q. That is for the purpose of arriving at the dollars and cents of profit, if any?

A. That is to arrive at the profit, if any, in dollars and cents.

Q. Isn't it?

A. Yes, sir.

Q. When you have reached that point and arrived at your profit in dollars and cents, when you want to get the percentage of your profit in dollars and cents or earnings, you figure that amount—that result which you have reached, against your written premiums, don't you?

A. Yes, sir.

Mr. Jacobs: That is all.

Mr. Folonie:

Q. And if you don't have any profits, you can't figure them against anything, I suppose?

A. No, sir.

Mr. Folonie: That is all.

(Witness again excused.)

[fol. 1726] The Referee: The further hearing of this case is now adjourned until Wednesday morning, October the 24th, at 10:00 o'clock a. m. at room 932 Equitable Building, 120 Broadway, New York City.

(Whereupon an adjournment was taken as last above indicated.)

(Pursuant to adjournment heretofore noted, parties reconvened, thereafter, at Room 932 Equitable Building, 120 Broadway, New York, New York, Wednesday, 10:00 o'clock

a. m., the 24th day of October, A. D. 1923, and the following proceedings were had:)

JOSEPH FROGGATT, recalled as a witness on behalf of the plaintiffs, having been previously duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Mr. Folonie: The Witness was sworn on a former occasion.

Q. Mr. Froggatt, before we adjourned our hearing you testified, did you not?

A. I did, sir.

Q. On that occassion the court asked you if you could determine with more definiteness than your then estimate as to the proportion of cancellations, relative to the unearned premium reserve; or, in other words, the proportion of cancellations out of unearned premiums; and you [fol. 1727] then stated that in your judgment it was 20 to 25 per cent. Have you made any calculations since that hearing to form a more definite estimate respecting that?

A. I have; and while those calculations are not quite complete—it is some job to do it in detail—yet from the figures I have gathered together the estimate, my estimate of about 20 per cent, I think will work out.

Q. What have you done in the way of calculation to verify it?

A. I have taken four companies and have taken their unearned premium reserve for the year 1916, and then have worked the cancellations on that business during the five year period so as to obtain as accurately as possible—and eventually it will be absolutely accurate—the proportion of cancellations to unearned premium reserve, which is the information you asked me about the other day.

Q. What companies did you figure on?

A. The Firemen's of New York, the Mechanics of Philadelphia the Westchester of New York, and the Atlas Assurance Company of London, England.

Q. And your calculations with respect to those four companies forms the subject matter of your verification of the figures you have previously given?

A. That is right.

The Referee:

Q. You think the character and extent of their business are fairly typical?

A. Yes, sir.

Mr. Folonie:

Q. They write a general line of insurance business such as is done by fire companies?

A. They do.

[fol. 1728] Q. And did you select them with any view of obtaining any particular result, or why did you select those companies rather than some others?

A. Well, I selected seven or eight companies and endeavored to get the records of those for the five years. Some of the records were in storage and one company, I think, had moved and they were not in position to check up their records for the five years. Out of the seven or eight companies I got the complete records of those four.

Q. In other words, your reason for selecting them was because you could get the records for those?

A. Yes. I just took any company; didn't make any difference to me what they were—and whose records were acceptable. They are typical of the general run of companies.

Q. Have you since our former hearing made calculations at my request respecting dividends of fire insurance companies doing business in the State of Missouri for the period of five years, 1917 to 1921, inclusive?

A. I have, sir.

Q. Have you made calculations respecting each of your companies as to the amount of dividends in dollars, the proportion that such amount bears to capital and the proportion the amount bears to capital and surplus combined?

A. Yes, sir.

Q. Have you made also a calculation in the way of a combined figure showing the dividends of all companies so doing business in Missouri and their combined capital, and another figure of the combined capital and surplus, and [fol. 1729] then related that total dividend figure to the sum of their capital and the sum of the capital and surplus?

A. Yes, sir.

Q. Have you with you the work sheet that you have showing the amount of dividends paid each year by each company and then a summary showing the result as to the combined experience of all companies?

A. I have, sir.

Q. And are those figures carefully and accurately prepared under your supervision?

A. They have been prepared under my supervision and have been checked back in every particular, with the exception of the ratios, which have not quite been completed. They have been completed for most of these years, but they were still working on them when I took papers away from them this morning.

Q. You mean the specific ratios of some companies as distinguished from the summaries or combined ratios?

A. Yes, sir.

Q. The combined ratios you have as to all companies there?

A. Yes, sir.

Q. And then you have it worked out specifically as to the majority of the companies?

A. It is all worked out, but some of them the percentages haven't been verified. I assume that they are accurate, but I can't say. I want to have them all checked over.

Q. If you should find any errors in any of those ratios it would not affect the summary total that you have as to all companies?

A. Not materially, because it would simply be possibly an error in one decimal point or so.

[fol. 1730] Q. I am going to offer the sheets in evidence in a few minutes, Mr. Froggatt, but first, for the general information of the court, I am going to ask you to state the summarized figures respecting all companies. But before doing that I wish to state, if the court please, that we still persist and insist upon our objection that the whole inquiry as to dividends of companies is improper for consideration. We are producing this evidence to rebut evidence produced which Your Honor has admitted. We still insist on our objection that the whole subject matter is incompetent.

The Referee: An act of predestination rather than free will?

Mr. Polonie: Quite so.

Q. Now, will you state to the court the summarized dividend experience of all companies doing business in Missouri for the period in question?

Mr. Jacobs: Is this the sum of dividends for the whole country, or merely dividends paid by these companies doing business in the State of Missouri?

Mr. Folonie: Yes.

Mr. Jacobs: But for the whole country?

Mr. Folonie: Yes.

Mr. Jacobs: No allocation at all?

Mr. Folonie: No.

The Witness: No. Merely a question of total dividends no attempt to relate it to Missouri at all; purely a dividend history of these companies who are doing business in the State of Missouri during that period.

Mr. Leahy: And are involved in this case.

[fol. 1731] The Referee: Just a moment. Because of the fact that there were some exceptions I didn't quite get that. First I understand this summary relates to the history of companies doing business in the State of Missouri, but it relates to their entire business.

Mr. Folonie: That is correct.

The Referee: Very good.

The Witness: For the year 1917 the capital of all companies was $87,572,330, and the surplus at the beginning of that year, $162,252,965.86.

Cash dividends paid during the year were $15,147,347.98.

The percentage to capital was 17.29.

The percentage to combined capital and surplus was 6.06.

1918.

Capital at the beginning of that year, $92,472,780; surplus, $153,500,771.21.

Cash dividends paid during the year, $15,525,269.67.

The percentage to capital was 16.79.

The percentage to combined capital and surplus, 6.31.

1919.

Capital, beginning of year, $98,389,580.00.

Surplus at the beginning of the year, $179,086,227.98.

Cash dividends paid during the year, $17,951,570.66.

Per cent to capital, $18.24.
Per cent to combined capital and surplus, 6.47.

[fol. 1732] 1920.

Capital at beginning the year, $104,237,995.
Surplus at beginning of the year, $216,957,355.89.
Cash dividends paid during the year, $20,299,964.59.
Per cent to capital, 19.47.
Per cent to combined capital and surplus, 6.32.

1921.

Capital at beginning of the year, $122,239,580.
Surplus at beginning of the year, $207,058,738.12.
Cash dividends paid during the year, $22,035,089.53.
Per cent to capital, 18.02.
Per cent to combined capital and surplus, 6.69.
The totals for the five years:
Capital, $504,912,265.00.
Surplus, $918,856,059.06.
Cash dividends paid during the years, $90,959,242.43.
Per cent to capital, 18 per cent.
Per cent to combined capital and surplus, 6.39.

Q. That is a total of those five years, for your dividend figure?

A. $90,959,242.43—five year period.

Q. Now, in the case of new companies entering the state of Missouri during that five year period, say entering the state in 1918, are they in your figures you have just given or not?

A. Every company licensed in Missouri and reported in their reports is included in this statement.

[fol. 1733] Q. Then new companies coming in with a given capital would go to increase the capital figure and the surplus figure to the extent of their capital and surplus on entering the state—for that given year?

A. Yes.

Q. If any company dropped out, say during a given year or during that period, then the figures for the succeeding January would show that capital and surplus eliminated?

A. Yes.

Q. What——

A. (Interrupting.) Yes, we have taken the companies for each year as shown by the Missouri report.

Q. Are your figures inclusive or exclusive of foreign companies?

A. It is inclusive of all companies whether domestic or foreign, licensed in the State of Missouri.

Q. Now, of the capital, do you figure for the foreign companies—I mean they have a deposit usually, do they not, in lieu of capital?

A. Liverpool, London & Globe, for instance, $400,000 deposit. That is the capital that we used.

Q. What is the surplus of that particular company?

A. $425,000.

Q. That is a foreign company which has that amount deposited with the insurance department of the state of New York in lieu of capital?

A. Just a minute. When I said Liverpool, London & Globe, I meant the Liverpool, London & Globe of New York. It does not include the Liverpool, London & Globe of England, as it would be impossible to get a statement of this kind which shows percentage of capital of companies out-[fol. 1734] side of the United States. My word "foreign" meant foreign to Missouri.

Q. Now, the companies foreign to the United States, you don't have in your figures there?

A. Oh, no, not at all.

Q. And they don't declare any of their dividends in this country, do they?

A. No.

Q. You would have no way of knowing what their dividends were?

A. Not unless we got some records from the other side.

Q. Well, they are not available to you, are they?

A. No.

Q. From your knowledge of the business—we have had called to our attention the fact of large stock dividends by the Home Insurance Company and the Continental and the Globe-Rutgers, showing the amount of direct contributions by stockholders materially less than the amount of the capital. Is that situation true of companies in general or are those companies exceptional in that particular?

A. I would say that they are exceptional.

[fol. 1735] The Referee: Mr. Froggatt, in making your calculations as to the percentages paid in dividends on capital or on capital and surplus, have you included in the [fol. 1736] percentage figures shown in these exhibits the stock dividends in cases where stock dividends were paid?

A. No, sir. It is percentage of cash dividends.

Q. Yes. I so understand the blank that I have before me, but I wished to be sure on that.

Mr. Folonie: To elaborate briefly on what the court has just interrogated you about, Mr. Froggatt, in the event of a stock divided being declared and paid would the combined capital and surplus be any different than it was before the stock dividend was declared or paid?

A. Not the combined, no sir.

Q. The effect of a stock dividend is to transfer that account from surplus into capital account, is it not?

A. Yes, sir.

Q. And therefore increasing capital to that extent and decreasing surplus to the identical amount?

A. That is true.

Q. Have you any notations on your sheets to show what percentage of stock dividends were to the capital and surplus figure?

A. I think the amount is given. The total stock dividends paid during that period were $3,980,000.

Q. That is by all companies?

A. Yes, sir.

Q. Will you compute what proportion that is of capital and surplus?

A. It is 0.27.

Mr. Jacobs: 21/100 of 1 per cent, do you mean?

A. 27/100.

Mr. Folonie:

Q. Of 1 per cent?

A. Yes.

The Referee: In reference to stock dividends, understand your statement to be that in years where stock divi- [fol. 1737] dends were declared, the effect of such action would be as to the percentage on the capital, to reduce the

amount of the percentage on capital, but it would not have any effect as to the percentage calculated upon both capital and surplus combined. Is that correct?

A. Yes, sir. Just transferred from one account to the other.

Mr. Folonie:

Q. After a stock dividend is declared and the stockholders get it, each stockholder has the same proportionate part of the company's assets that he had before, hasn't he?

A. That is true.

Mr. Folonie: That is all.

Cross-examination by Mr. Jacobs:

Q. Now, you had an increase in addition to the cash dividends you paid of $90,000,000—you had an increase in surplus of about 15 million, didn't you?

A. You mean increase from '17 to '21?

Q. Yes, sir.

A. 45 million dollars

Q. More than that, isn't it? You run from 162 to 217?

A. 207.

Q. Is that 45 million?

A. Yes, sir.

Q. Well, we will take it 45 million. That would make your—considering your increase in surplus, wouldn't that increase your percentage of the relation of your dividends paid, if you considered as well the increase in surplus as against capital stock, to about 27 or 28 per cent—instead of 18 and instead of against your capital and surplus, to about 10 per cent, roughly?

Mr. Leahy: You mean all that has been paid in dividends? [fol. 1738] Mr. Jacobs: No, if we consider that there was an increase in this business of 45 to 50 million dollars, and surplus in those five years.

Q. That surplus came from the profits of the business, didn't it?

A. Must have.

Q. Must have, certainly. You don't want to ignore it in figuring the experience of those companies for these five years, do you?

A. Well, I figured what I was asked to figure, the percentage of dividends paid to capital and surplus.

Q. They didn't say anything about the increase in surplus at all, did they?

A. No. I showed that in the statement, of course.

Q. But you didn't figure the percentages, did you—as far as the increased surplus is concerned?

A. No.

Q. You don't show the increase in surplus as a figure, you merely showed the surplus each year in order to arrive at your percentages, didn't you?

A. That's right.

Q. Now, what I said about those percentages is about right, isn't it?

A. I don't quite get that.

Q. You had an increase of something like 40 to 45 million dollars on your surplus in your five years. That ought to be figured along with the cash dividend in order to arive at a proper statement of the company's experience, shouldn't it?

Mr. Folonie: We object to the "increase," because it assumes that this was all a way of—all a surplus by way of accretion, as distinguished from new companies entering the field and contributions by stockholders. As far as [fol. 1739] I know, the witness has made no calculation as to what those are, and I don't know whether he could or not.

The Referee: The witness may take those factors into consideration in answering it, of course.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Am I about right, Mr. Froggatt?

A. May I have the question read?

Mr. Jacobs: Well, I will repeat it. Perhaps I am not very clear, anyway.

Q. Your figures were roughly that your cash dividents for the five years bore a relationship to your capital—combined capital of those companies—of 18 per cent?

A. Yes, sir.

Q. And a relationship to the combined capital and surplus of 6.39 per cent?

A. Right.

Q. Now, if you take into consideration along with the 90 million dollars, roughly, the cash dividends paid by the combined companies for that period, something between 45 and 50 million dollars in increased surplus, for the five years, in those combined companies, it increases? Your percentage is against, first, the capital, and, second, against the capital and surplus, of the companies to respectively about 27 or 28 per cent and to about 10 per cent, doesn't it?

Mr. Leahy: You mean presuming that amount was earned?

[fol. 1740] Mr. Jacobs: I am not presuming. I am just taking his figures as he gave them from year to year.

The Referee: You would have to assume that.

Mr. Jacobs: Yes, you would have to assume that the new companies you are talking about didn't earn anything and that the mismanaged companies are figured in these figures.

A. If the 45 million dollars increase in surplus is added to the dividends paid and then that figure is calculated against the combined capital and surplus to arrive at a ratio, it would increase the percentages, roughly speaking, in about the percentages mentioned by Mr. Jacobs.

Q. Now, Mr. Froggatt, I am not sure whether you are the man or not, but I think you are not—someone testified here the other day that there were some companies who had had a much more unfortunate experience than other companies, and one or two of them were named which had been taken over by another company, and that their condition was due to inefficient management. Now, in arriving at your figures you have taken all the companies that have done business in the State of Missouri, where there have been reports made during the five year period in question, including whatever companies may have been doing business there that suffered during that period from inefficient management, haven't you?

A. I have, sir.

Q. Now, I want to ask you first, when you began to use the basis of the earned premium for figuring the experience of your company? When, Mr. Froggatt?

A. When did I begin to use it?

[fol. 1741] Q. When, in figuring for the companies with reference to their experience, did you begin to use as a basis of calculation earned premiums?

A. Always been figuring them that way.

Q. Always done it?

A. Always.

Q. Now, have you prepared reports to the various states for the companies? Has that been one of your accounting duties?

A. No, sir.

Q. Never have done that?

A. Not since I was in the public accounting business.

Q. Now, isn't it a fact that the basis of earned premiums was only used from the time that laws were passed permitting the making of rates by the companies together?

A. I don't think so.

Q. Isn't it a fact that no longer ago than 1920 the companies were agitating for the first time the use of the earned premium as the basis of calculation?

A. Not to my knowledge.

Q. Now, I have here a document issued by the National Board of Fire Underwriters of New York, dated 1920, and entitled, "What constitutes a reasonable underwriting profit and the method of determining the same." Now, I want you to look at this instrument issued by this organization and tell the court if in this instrument there is not set up the basis of experience on earned premiums. That is 1920.

(Witness examines document.)

A. Yes, sir. It is set up on the basis of earned premiums.

Q. Earned premiums?

A. Yes, sir.

[fol. 1742] Q. Now, that is dated 1920, isn't it?

A. 1920.

Q. Now, isn't it a fact that the insurance commissioners did not adopt that method until December, 1921?

A. No, sir.

Q. That is not a fact?

A. No.

Q. You think that the insurance commissioners adopted the earned premium as a basis before December, 1921?

A. Yes, sir.

Q. Now, where did they adopt it, and when?

A. They adopted it by sending out to the companies many years before that a form of annual statement which called for the underwriting experience of the companies to be made up on the earned premium basis.

Q. Now, isn't it a fact that the companies, acting in concert through this organization called the National Board of Fire Underwriters, agitated that method of calculation through this instrument that I have shown you in 1920, and at a convention of part of the commissioners in December, 1921, adopted that method?

A. I think that is true.

Q. Now, there are entitled to sit in the fire superintendents' convention about 54 men, aren't there?

A. About that number, yes.

Q. Including the various provinces that are entitled to representation, and the District of Columbia?

A. That is true.

Q. And that of those 54 there were present at the adoption of this method which had been suggested in the preceding year by the National Board of Fire Underwriters 20 men, that's right, isn't it?

A. I don't know how many were there, sir.

[fol. 1743] Q. You don't know?

A. No.

Q. And isn't it a fact that of those 20, 18 voted for and 2 against the adoption of this plan?

A. I don't know that. I don't know what the vote was, sir.

Q. And isn't it a fact that the two men who voted against it are still superintentendents of insurance and only five of the 18 remain as such? Do you know that to be a fact, or not?

A. I don't know.

Q. Now, you do know, though, that this fragmentary representation of the fire insurance commissioners adopted that plan the year after it was proposed by this document issued by the National Board of Fire Underwriters?

A. Yes, sir.

Mr. Leahy: Well, he said he didn't know whether it was a fragmentary part or not. I think that part of the answer should be stricken out, Your Honor.

Mr. Jacobs: Well, I will withdraw the adjective.

The Referee: Strike out the word "fragmentary" in the question.

Mr. Jacobs:

Q. Now, Mr. Froggatt, do you represent the Great American Insurance Company as one of your companies for which you are an accountant?

A. Only in one account; I am not their general accountant.

Q. You represent the Globe-Rutgers?

A. No, sir.

Q. The Fidelity-Phoenix?

A. No, sir.

Q. The Hartford Fire?

A. No, sir.

Q. You don't represent the Hartford?

A. No, I do not.

[fol. 1744] Q. Do you represent the Continental?

A. No, sir. Nearly all of those companies have their own inter-office auditors.

Q. Do you represent the Aetna?

A. No, sir.

Q. Do you represent the Home?

A. Yes, sir; in the auditing of their branch offices only, as I said the other day.

Q. Now, I want to talk to you a little about their method of figuring. We are agreed, aren't we, Mr. Froggatt, on this one proposition, using the calculation and the method of calculation which you have suggested for arriving at the earned premium figure, that you add at the beginning of the period the outstanding unearned premiums and subtract the same at the end of the period?

A. Yes, sir.

Q. We are agreed on that, aren't we?

A. We are.

Q. We are also agreed that on an ascending scale of business there is a larger sum substracted at the end of the period than is added at the beginning of the period, aren't we?

A. That naturally follows.

Q. As a matter of course?

A. Yes.

Q. What would you say is the excess percentage of incurred or estimated losses, rather, over losses actually paid? Would it amount, as suggested in this room a few days ago, to about 15 per cent?

A. I really don't know.

Q. Would 15 or even, say, 10 per cent, be a fair figure?

A. I should say 10 per cent; that is, I am merely guessing at this. I have no knowledge of it.

[fol. 1745] Q. Well, we will take 10, then, as a basis. Now the Home Company—I am going to use these figures and let us assume they are correct. If they are wrong you can correct me, or they can be corrected—because I am trying to establish a principle now without particular regard to correctness of these figures, but they are figures which arose through '18 to '22, inclusive, and we will assume they are correct for purposes of this examination.

The net premiums written for five year period I have just suggested for the Home Company amounted to $195,837,520.50. Now, there was an increased scale of business with the Home Company during the five year period named, wasn't there?

A. I don't know. Was there?

Q. Well, I am going to give you this figure, then, which I will ask you to assume is correct—that on your method of figuring there was this difference between the amount of money that was added at the beginning of the period and the amount of money which was subtracted at the end of the period, this amount being the amount which the subtracted sum exceeded the amount added, $14,066,617.00? Now, that 14 odd million dollars for that period of time is the amount of money by which the amount subtracted at the end of the period, on your basis, exceeded the amount added at the beginning of the period, or can be called increased unearned premiums, can't it?

A. Yes, sir; assuming those figures are correct. That is the increase in the unearned premium reserve.

Q. I am going to ask you to assume those figures are correct.

A. That is right.

[fol. 1746] Q. Now, if those figures are correct, using your basis of calculation to arrive at the earned premium basis, there was charged as expense an excessive sum of money, based upon this figure of 14 odd million dollars, wasn't there?

A. No, sir.

Q. Now, during that period the entire expense of every kind and character was charged, wasn't it?

A. Yes, sir.

Q. But you carried over into a subsequent period an excess over the amount which you added at the beginning of the period of 14 odd million dollars, didn't you?

A. We carried forward the premiums which were not earned, yes.

Q. And that was 14 odd million dollars increase, wasn't it?

A. It was.

Q. Now, isn't it a fact that the expense should not have been charged on that account?

A. No, sir.

Q. You think that in arriving at the experience of a definite, specific, fixed time that there should have been the full expense for everything charged within that period?

A. Whatever had been paid.

Q. Yes, sir. Now, that 14 odd million dollars is not credited to income, is it, for that period, I mean?

A. No.

Q. Remember that I am always talking about the five year specific period; not credited to income?

A. I think the word "income" is not properly used there. Any credit to premiums earned would be better.

Q. Any credit to premiums written, is it?

A. Premiums earned.

[fol. 1747] Q. Or any credit to premiums earned, that is what I mean. You are right and I am wrong.

A. Yes.

Q. That sum of money, as far as——

Mr. Folonie (interrupting): Aren't you wrong in one other thing? Isn't the computation you have been giving a six year period?

Mr. Jacobs: No.

Mr. Folonie: Don't you say 1917 to '22?

Mr. Jacobs: No, '18 to '22.

Mr. Folonie: Oh, I beg your pardon. I misunderstood you.

Mr. Jacobs:

Q. So there is a sum of money which, as far as your calculations are concerned in arriving at your percentages, that 14 odd million dollars is not in your figures for that five year period, is it?

A. It is not in the earned premiums.

Q. No, sir. Now, what is, if you know, the percentage of expense of the Home Company, about? The average percentage expense?

A. I don't know, but it can be gotten.

Q. 35 per cent would be safe, wouldn't it?

A. I think it is more than that.

Q. Well, I am going to just take 35, and assume it was more. You would have 35 per cent basis—expense ratio, anyway?

A. Oh, yes.

Q. There is a fixed charge of about 25 per cent for commissions, and your taxes and your other expenses that are certain to fall that amount to 35 per cent, anyway?

A. 35 to 40 per cent, yes.

Q. Now, in order to give the true experience of that com-[fol. 1748] pany, should there not be taken 35 per cent of that 14 million dollars odd, amounting to 4 million—$4,623,315.95, which should be deducted from the expenses of that period?

A. No, sir.

Q. You think that in spite of the fact that that 14 odd million dollars is not figured in that the total expense of every kind should be added in there to reach the experience of that period?

A. I do.

Q. And that $4,600,000, which represents the expense on the basis of only 35 per cent expense ratio—upon that 14 odd million—should go into the expense account for that five-year period?

A. I do.

Q. You think that ought to be done that way?

A. I do.

Q. That strikes you as a proper method of calculation?

A. It does.

Q. Very well, sir. Now, you also figure on an incurred loss basis, don't you?

A. We do.

Q. Now, for this period the Home Insurance Company had certain estimated losses, didn't it?

A. Unpaid at the end of the year.

Q. And we agreed a little while ago that 10 per cent was a fair basis upon which to calculate as representing the difference between the losses estimated and the losses actually paid?

A. As representing the items which were outstanding and unpaid at the end of the year.

The Referee: As compared to what?

A. No. There is quite a difference in there. We are talking about two different things. Or we might be construed to be talking about two different things. Let me say that we are talking about estimated losses on those [fol. 1749] paid. We must assume, of course, that we are talking about outstanding losses and those paid, which I think is what counsel has in mind.

Mr. Jacobs:

Q. No, here is what I have in mind:

Mr. Folonie (interrupting): You are talking about two different things.

Mr. Jacobs:

Q. (Continuing:) You arrive at the figure—I don't think counsel should suggest that to the witness. You arrive at the figure of incurred losses——

Mr. Folonie (interrupting): It is quite obvious that you are, although I apologize for commenting at all.

Mr. Jacobs:

Q. You arrive at the basis of incurred losses by subtracting the outstanding losses, unpaid at the beginning of the period, and add them at the end of the period, don't you?

A. Add them to the unpaid losses at the beginning of the period, yes.

Q. On an ascending scale of business that operates to increase the apparent incurred losses, doesn't it—to that extent?

A. Yes; naturally.

Q. Now, we will take as a figure, and we will assume my figures are correct, net paid and incurred losses of that period of this company, $101,755,617.89, and if you deduct 10 per cent saving in the payment of the increase in incurred losses, that would reach a far different basis upon your method of calculation, wouldn't it, in the light of increased business?

Mr. Folonie: May I have that read, please? I don't understand that question at all. I object to it as assuming anybody has ever said 10 per cent of the incurred losses was anything, in any possible event, saved.

The Referee: I understand the——

[fol. 1750] Mr. Jacobs (interrupting): Except that the witness said 15 per cent the other day.

Mr. Folonie: No, he said 10 per cent of the entire incurred losses for the year were outstanding at the end of the year.

The Referee: I may be wrong about that, but I think this witness has made a distinction. My understanding is that this witness has testified that of the incurred but unpaid losses outstanding at the end of a given period a reduction of 10 per cent would have the correct amount of paid losses when those losses were ascertained and paid. If I am not correct in that——

Mr. Folonie (interrupting): If you will pardon me—you are confusing, I think, the term "incurred" as inclusive of both those paid during the period and those unpaid. I think you are using the term "incurred" erroneously there.

The Referee: Possibly so. I mean to distinguish between the incurred unpaid losses——

Mr. Folonie (interrupting): The unpaid part of the incurred losses.

The Referee: Yes. The incurred losses, including the losses paid and unpaid.

Mr. Folonie: Yes, sir.

The Referee: Now, Mr. Froggatt, explain that situation, please.

A. May I answer what I have in mind here as to this question?

The Referee: Yes.

A. I understood that we were considering that the outstanding losses—outstanding and unpaid at the end of the [fol. 1751] year—would be about 10 per cent of the paid losses of the year. That is, in arriving at the amount of outstanding losses.

Mr. Folonie: That is not what he is trying to ask you. He is trying to ask you what part of the unpaid losses existing at the end of the year prove to be excessive in fact by experience. I think that is what he is trying to ask you.

The Witness: Is that so?

Mr. Jacobs:

Q. Well, that is all right. What do you say about that?

A. That differs very materially in companies. Some companies set up very limited estimates and some very liberal; some under-estimate it.

Q. They are not very likely to under-estimate, are they?

A. Oh, yes. It depends upon the amount of surplus, that the company may have. Sometimes they are under-estimated in order to produce a little larger surplus at the end of the year. I have found them frequently under-estimated, in making examinations of companies.

Q. Where do they get their loss estimate?

A. They get first an advice from their agent.

Q. The first they get is the estimate of the assured, isn't it?

A. Well, the company doesn't. The agent does.

Q. And unless there is a sharp difference between them, the estimate of the assured usually comes in as the original estimate and stands on the books until there is a reason for changing it, doesn't it?

A. There is a different method. Some companies place [fol. 1752] on their books on advice of loss a nominal amount and then change that estimate when they get more definite information. Other companies place a nominal amount on it and let it stay there until the loss is paid.

Q. What do you mean by a nominal amount?

A. Well, if a loss comes in a man may report it, "Had a loss under such and such a policy. Don't know what the data will be. May be serious. No estimate given."

Q. Does the agent report like that?

A. Certainly.

Q. Now, don't the companies desire a fair and reasonable estimate in order to know where they stand finally at the end of the year?

A. I think they do.

Q. If they under-estimate, would they know where they stood?

A. They might know where they stood and yet so far as the public reports still under-estimate.

Q. You mean by that that they would inform themselves privately of how they actually stood but that the public report would show a different situation?

A. I have known that to be so.

Q. I see. Well, now, aside from that, is it the general practice of the companies to receive an estimate of losses which would be reasonably certain to cover any liabilities outstanding against them?

A. I think generally the companies receive fairly accurate reports of losses.

Q. Now, of course, any losses that are reported, they may be paid partially, may they not, at some time?

A. You mean paid on account?

Q. No. Settled on a partial basis, may they not?

A. I don't know of any.

[fol. 1753] Q. Have you ever heard of that?

A. I don't know what you mean. You mean they may be paid for the full amount of the policy or for a lesser amount?

Q. Yes. A. Oh, yes; that is true.

The Referee: Mr. Froggatt, suppose that a loss is reported at $100,000, is that loss sometimes actually adjusted at a considerably reduced figure?

A. Yes, sir.

Mr. Jacobs:

Q. Some losses are never paid, but are contested along the basis of liability, aren't they?

A. That is true.

Q. Incendiarism or something of that kind?

A. Yes; and some are paid for very much larger amounts than reported.

Q. That is not very often, though, is it?

A. Oh, yes; I think there are frequent cases where the companies pay more than they had estimated.

Q. Would you say, broadly speaking—what would you say was the percentage of excess in estimating losses over losses actually paid?

A. You mean over all companies?

Q. Yes, speaking generally, as an insurance expert?

A. I would say 5 to 10 per cent.

Mr. Folonie: Of what?

A. Of the estimated losses over those actually paid.

Mr. Jacobs:

Q. Now, estimated losses, that is just simply another expression for incurred losses, isn't it?

A. Incurred, but not reported.

Q. Well, they are all reported at once, aren't they?

A. I mean incurred and not paid. I beg your pardon. [fol. 1754] Q. Yes. Now, your net paid and incurred losses for this period of the Home Insurance Company was $101,755,617.89. Would you say that is between the amount of incurred losses which are added at the beginning of your period—or rather which are subtracted—and added at the end of your period, that 10 per cent was a fair basis of an increased scale of business, using your method of calculating as the basis?

A. Do I understand your question to mean, do I agree that 10 per cent of the difference between the outstanding losses at the beginning of the period and at the end of the period would be a fair basis of increase

Q. Yes, using your method of calculation.

A. I don't know. I don't know what the increase would be; might have a very large increase at the end of the period—of standing losses over the outstanding losses at the beginning of the period.

The Referee: Mr. Blume, read me the question.

(Question and answer read by the reporter.)

The Referee: I wonder if the witness and counsel understand one another with reference to those questions and answers?

Mr. Jacobs:

Q. Well, let me ask you this: We are agreed, aren't we, Mr. Froggatt, that using your method of calculating the incurred losses on an increasing scale of business, there is a larger sum—on an increasing scale of business there is a larger sum added to your losses than is subtracted from them, isn't there?

A. It would logically follow that on an increased amount of business you would have a larger incurred loss and there-
[fol. 1755] fore a correspondingly larger outstanding loss at the end of the period.

Q. Now, would 10 per cent be a fair difference between those figures?

A. That is very hard to say, because it would be—it might or might not; dependent upon the general experience of the companies during their last three months. It might run heavier or might run very favorable to the company. Very hard to say.

Q. You wouldn't want to give a figure on that basis?

A. No, sir.

The Referee: Referring to a matter about which you were testifying a few moments ago, Mr. Froggatt: I assume that in the usual course of business that reputable companies, having no uterior purpose to serve, the amount of the unpaid and incurred losses is shown on the books of the company at the end of a given period at such a sum as will in all reasonable possibilities cover the entire amount of loss when finally adjusted and ascertained?

A. Yes, sir.

Q. Now, then, does that amount of unpaid incurred losses as a rule—when the books are properly kept and no ulterior purpose to serve—exceed or does it not exceed the amount of the losses as that amount is actually determined when the losses are adjusted and paid?

A. The incurred losses unpaid at the end of the year?

Q. Yes.

A. May or may not be increased on payment. It is hard to tell what you are going to pay on the information

you have at hand. I think quite likely for the unpaid portion of those losses that when they are paid they will be paid for a larger amount, but there is saving, as I said before, [fol. 1756] to the company generally, taken throughout the year, on the total losses paid and the estimates they have provided.

But you see you are required to report very quickly after the end of the year and you don't always have full information and you might have to pay more or less.

Q. Do I understand you to say, then, Mr. Froggatt, that you think generally the amount of incurred unpaid losses shown on the books of the company at the end of a given period usually do not exceed the amount actually paid on those losses when the amount is definitely ascertained and the claim adjusted

A. Yes. Yes, sir.

Mr. Jacobs:

Q. What did you mean by the statement there was a saving throughout the year?

A. I mean that taking the companies' experience generally, along the lines of your previous question, that if you took the actual losses reported and estimated, on the company's books, and subsequently checked the paid losses against them, that there will prove to be a saving over the estimate, which is brought about by perhaps their estimates of salvage subsequently collected on some of those losses.

The Referee: Well, if that applies during the period of the entire year, why wouldn't the same general principle usually and normally apply to the last three months of the year?

A. Because of the fact that losses are reported in a small time in which to get real figures for the last thirty days; losses are coming in during all December, and it is very hard to get accurate information.

[fol. 1757] Mr. Folonie: That is not his question. His question is, why, if the estimates prove to be liberal through the year in general, why doesn't the same rule hold as to the unpaid part that remains at the end of the year?

A. Because if they had a longer time in which to report them they would have corrected these estimates which come in in November and December, with the later information

at hand, while they have to take just the flat information that we have had a loss and it may amount to so and so; have no time to get further information before they have to report.

The Referee: Proceed.

Mr. Jacobs:

Q. Is it reasonable to say that there is a 10 per cent saving in the payment of the increased and incurred losses, using your method of arriving at incurred losses from the basis of that calculation, in your knowledge of the experience of the companies?

A. No, I would say not.

Q. What would you say would be the proper percentages?

A. I would say, as I have just testified, that on those outstanding losses there would not be any saving.

Q. Well, you are talking about the year, aren't you? It washes out.

A. You wash that out in the method of arriving at the figure. You wash it out in the paid losses.

Q. Well, now, let's see if we have got a specific definite period over which you are working you don't, do you? If you have got a five year period there is——

A. (Interrupting.) You wash out all differences on the paid losses.

[fol. 1758] Q. Well, you may or you may not. If there is a saving you wouldn't wash out the difference. There would be a saving, wouldn't there?

A. You wash it out, whatever the saving is, more or less.

Q. You mean by that that after the saving is completed it goes into—it is taken care of by some method of bookkeeping, but the saving is actually there, isn't it?

A. The total paid losses taken over the period represent the actual sum the company paid. You take that figure and deduct from it the outstandings at the beginning of the year and you add the outstandings at the end of the year—so that all disappears; so that all differences will catch any estimate, and those losses which have been paid have been taken care of.

Q. But in a five year period you can't wash them out. They might wash out if you would end your company's business at some time, but they don't wash out in a five year period, in a continuing business, do they?

A. On everything we have paid.

Q. But where you are figuring your incurred losses on an increasing scale of business you add more losses than you subtract, don't you?

A. You naturaly expect to.

Q. Well, it is the experience of the insurance world that you would?

A. Absolutely; yes. No disputing that.

Q. Would 10 per cent be a fair figure?

Mr. Folonie: Of what?

Mr. Jacobs:

Q. Of the difference.

A. Difference of what?

[fol. 1739] Q. Between what you would add and subtract?

A. Well, that would depend on whether the increase in business was 10 per cent or not.

Q. I understand you, but I am asking you as a matter of average and insurance experience.

A. I couldn't tell you that.

Q. You don't know?

A. I don't know and can't say.

Q. Very well. Now, I am going to ask you if by deducting 10 per cent saving in the payment of increase in incurred losses, which amounts to $4,880,915.17, on the basis of net paid and incurred losses by this company of $48,372,000 odd dollars, 10 per cent of that would be the figure I gave you, wouldn't it?

A. Yes.

Q. But you are not prepared to say 10 per cent is a proper basis?

A. No, sir.

Q. One way or the other?

A. No, sir.

Q. Although you do admit that on an increasing scale of difference—on an increasing scale of business there

would be that difference between the two amounts at the beginning and the end?

A. Yes, sir.

Q. Again, you say, using your method of calculation for arriving at incurred losses, that that would be the reasonable excess, or the difference between the two figures at the beginning and the end of the period? That is, what is subtracted at the beginning and added at the end?

Mr. Leahy: That is a hard question.

A. No, I can't say.

Mr. Jacobs:

Q. Now, do you believe under your method of calcula [fol. 1760] tion, under an increasing scale of business and with your further statement that with an increasing scale of business there would be a difference, an excess in the amount of incurred losses, added to what was subtracted, that that should be figured in in the year's—that that excess, I mean, should be figured in the year's experience to arrive at a proper result?

A. It should.

Q. You think it should be?

A. Yes, sir.

Q. Regardless of the excess?

A. Yes, regardless of the excess.

The Referee: Take a recess for five minutes here, gentlemen.

(Which was accordingly done.)

Mr. Jacobs:

Q. You think the entire expense upon the increase and unearned premiums which are not accounted for in the earned premium income should be changed in arriving at a year's result, or a period's result.

A. Yes, sir.

Q. And that the $4,900,000 odd dollars so represented, as 35 per cent of the increased expense, based upon this increase in unearned premium, should be charged in as one of the items for the year's or period's expense?

A. I do, sir.

Q. Now, this is for an experience of five years. That expense on that business has been paid, hasn't it? That represented by that $4,900,000 dollars odd?

A. Yes, sir.

Q. That has been paid?

A. Yes, sir.

[fol. 1761] Q. And yet that income, that increased income, based upon your way of figuring earned premiums, of $14,000,000, goes over into the following period and is not represented in that five year period, is it?

A. It is represented in the premium writings of the company.

Q. But not in earned premiums, is it?

A. No.

Q. Not at all?

A. No, sir.

Q. And the same is true on the proposition of incurred losses?

A. What do you mean is true?

Q. That is, whatever increase there is due to an ascending scale of business at the end of the period, that is counted in?

A. Oh, yes.

Q. The five year period?

A. Oh, yes. Whatever losses have been incurred by the company are a liability and are so set up.

Q. And are counted in that period of five years?

A. Yes, sir.

Q. So you have the increase in the incurred losses, due to the ascending scale of business, and you also have the increase in the expenses due to the same reason, as represented by a percentage of your business done?

A. Yes, sir.

Q. Using 35 per cent as your basis?

A. Yes, sir.

Q. And you also leave out of there that amount of money which I suggested to you awhile ago and do not consider it as a part of the net premiums earned during the five year period?

A. That is right; that is quite true.

Q. Now, that is your method of calculation, is it?

A. Yes, sir, absolutely.

[fol. 1762] Q. And you endorse that method of calculation?

A. I do.

Q. And the fact of the matter is that by using that method of calculation your report—that method of calculation, for rate making, there will appear from your report, perhaps not a real loss but earnings below what you consider a fair return, whereas as a matter of fact the real experience exceeds the earnings you call a fair return—isn't that right?

A. I don't know whether they do or not.

Q. What is the Home Company, is that a bureau company or a union company?

A. I presume a union company. Possibly also a bureau company.

The Referee: What is the distinction?

A. Why, I think the bureau companies are bureaus who belong to the Western Bureau, but I think they may also belong to the Eastern Union. I am not positive but I think that is the rule.

Mr. Jacobs:

Q. You think they are a union company?

A. I think so.

Q. A union company means an Eastern Union of what?

A. Eastern Union, I believe.

Q. Or companies?

A. I think so.

Q. Is the Continental an Eastern Union company?

A. I don't know.

Q. You don't know about that?

A. No, I don't.

Mr. Jacobs: Are they, Mr. Robertson?

Mr. Norman T. Robertson: No, sir.

Mr. Jacobs: They are not a union company?

Mr. Robertson: Well, not an Eastern Union company.

[fol. 1763] Mr. Jacobs: What is the difference between a Western Union company and an Eastern Union company?

The Witness: I don't know.

Q. What is a bureau company?

A. I couldn't tell you about these associations?

Q. What are the unions and bureaus?

A. Associations of companies.

Q. What are they organized for?

A. I couldn't tell you that.

Q. You don't know?

A. No.

Q. Do you know how many companies belong to the Eastern Union?

A. I don't know.

Q. Or how many to the Western Union?

A. I don't know.

Q. Or how many to the Bureau?

A. I don't know that.

Q. Are there more than one bureau?

A. I don't know. There is a Western Bureau. I have heard of a Western Bureau. I don't know anything about these western associations, not being a member of any of them.

Q. Did you ever hear of any of these, what are called underwriting syndicates of New York?

A. No, I don't know that I have.

Q. Never heard of one of them?

A. No.

Q. Don't know what they are?

A. I don't know what you mean by an underwriting syndicate.

Q. You don't know what an underwriting syndicate is?

A. No.

Q. Did you ever hear of the sale of stocks and how they are sold?

A. In what?

[fol. 1764] Q. Anything.

A. Oh, yes; often heard of selling of stock, yes.

Q. Did you ever hear of an underwriting syndicate handling the sale of stock?

A. No.

Q. Never heard of that?

A. No, sir.

Q. Never came within your knowledge at all?

A. No, sir.

Mr. Folonie: We don't claim that comes under underwriting activities or fire insurance companies, if the court please.

Mr. Jacobs: I claim it comes under the investment end of the business.

The Referee: So far, the record is dark as to whether there is any such thing or not.

Mr. Jacobs:

Q. Do you know what a selling syndicate is?

A. A syndicate that sells something, I should think.

Q. Do you know what a bureaus' syndicate is?

A. A syndicate composed of bankers, I should assume.

Q. You have never heard of one of them?

A. Which of them?

Q. In the handling of stocks. You never heard of any of these syndicates handling stocks?

A. I have heard of syndicates that handled stock, yes, but not syndicates that handled stocks of fire insurance companies.

Q. Never heard of that?

A. No, sir.

Q. If you had a million dollars worth of unearned premium reserve representing a million dollars worth of liabilities outstanding, and you wanted to reinsure, what would that million dollars worth of liabilities, what pro- [fol. 1765] portion of the unearned premium would that million dollars worth of liabilities be taken off of your hands?

A. Well, as I understand this question, it is that if I have unearned premiums of a million dollars, representing the outstanding business of my company?

Q. Million dollars of liabilities.

A. Unearned premium liability?

Q. Yes.

A. Representing the unearned premiums on all the business I have in force?

Q. Yes.

A. And I want to sell it?

Q. Yes, reinsure it.

A. How much would I get for it?

Q. Yes, what would the company take over your million dollars worth of liabilities for, how much of that reserve?

A. Why, it would depend upon the character of the business.

Q. Well, isn't it a fact that a fair figure would be that they would take over your liabilities for $600,000 of that reserve?

A. I think that is a fair statement.

Q. Leaving $400,000?

A. Leaving $400,000 as the commission obtained on that business.

Mr. Jacobs: That is all.

Mr. Folonie:

Q. In other words, there is $400,000 of the surplus in that unearned premium figure?

A. Yes. That has been paid up by the company to get it.

The Referee:

Q. Does that mean, Mr. Froggatt, that that amount of unearned premiums, that is to say one million dollars, would be worth, according to the usual experience of average companies doing a normal business, the sum of $600,000?

A. Would be worth to the company that bought it?

[fol. 1766] Q. Yes.

A. Yes, sir. It would represent—the $600,000 would represent $1,000,000 of unearned premiums, which they would have to get from me, less 40 per cent which they would pay me to reimburse me for the commission and expense I had paid out in putting that business on my books.

Mr. Folonie:

Q. Otherwise phrased, the $600,000 would be the present cash value of the $1,000,000 of unearned premium reserve. In other words, you have about 40 per cent of that reserve which has come from the stockholders, as distinguished from premiums?

A. Yes.

Mr. Jacobs (resuming cross-examination):

Q. You said first, "leaving $400,000 of premiums," didn't you?

A. Commissions and expenses.

Q. Well, now, you are figuring 25 per cent commissions?

A. Well, that is the average.

Q. Well, you don't know whether you should figure 15 per cent expenses on there? There may be in there only 5 per cent expenses.

A. But it is taken as an average.

Q. Now, this million dollars that you have got in there, reserve, that is a reserve which came from the policyholders and represents unearned premiums, doesn't it?

A. It is a reserve on the policies you have written, the unearned portion of the premium.

Q. Where did you get that reserve?

A. By calculation of the premiums which you received.

Q. I mean the money came from premiums written—paid, didn't it, and represents the unearned portion?

A. Absolutely.

[fol. 1767] Q. Well, if that is a fact there is a profit of 40 per cent in there, isn't there, on re-insurance?

A. No, sir. I must have paid out 40 per cent on the average for doing business in order to put it on my books in the first place. I am just getting it back again.

Q. Well, that million dollars, then, would show an excess of 40 per cent over your book values as you carry the matter, wouldn't it?

A. I don't understand that question.

Q. You have got a million dollars set up, haven't you, as a reserve?

A. Yes; as a liability, yes.

Q. If you have got a company with a five million dollar capital and a four million dollar surplus, the book value of that company is what?

A. It is five and four, nine million dollars.

Q. If you have got a reserve of another million, unearned premium reserve of a million, which leaves you the sum of $400,000, by disposing of those liabilities, with $600,000, of your premium reserve, that leaves $400,000 which is added to the book value of your company and increases the book value from $9,000,000 to $9,400,000, doesn't it?

A. If you put through a transaction of that kind it would, yes.

Mr. Jacobs: I believe that is all.

The Referee: Just a moment.

Q. Taking the illustration given, of the $4,000,000 capital as I recall, and $5,000,000 surplus, and $1,000,000 of an unearned premium reserve——

A. (Interrupting.) That is included in arriving at the surplus.

Q. That is included in arriving at the surplus?

A. Yes, sir; it is a part of the liabilities.

[fol. 1768] Q. Well, let us eliminate that phase of it entirely. Assume a capital of $4,000,000, a surplus exclusive of any unearned premium reserve, for the moment, of $1,000,000. I have inferred from your previous testimony that in determining the book value of the stock of that company at a given moment you would count the $4,000,000 capital as $4,000,000; you would count the $5,000,000 surplus as $5,000,000. Then you would count 60 per cent of the $1,000,000 unearned premium reserve fund as of the value of $600,000, so that the book value of the stock would be represented by the capital, $4,000,000, the surplus, $5,000,000, and the value of the unearned premium reserve of $600,000?

A. No. That is not made up that way. In the first place, you take the premiums in and add it to your income and it becomes a part of your surplus.

Q. I understand, but for the purpose of this illustration I am distinguishing the surplus by leaving it out of consideration for the present—that 1 million dollars unearned premium reserve fund.

Mr. Folonie: The difficulty is you are taking your liabilities there instead of your assets, to get at your book value.

The Witness: You would have to first deduct the million dollars from your surplus to do what you want to do.

The Referee:

Q. It is not what I want to do at all, pardon me. I don't want anything about it—except light. Now, assume—this is really without regard to bookkeeping methods—assume you have a company with a capital stock of 4 million [fol. 1769] dollars, and a surplus, exclusive of any unearned

premium reserve whatever, of 5 millions of dollars, and you have an unearned premium reserve fund of 1 million dollars. Now, then, in determining the book value of the stock on that assumption you would consider the 4 million dollars of capital and the 5 million dollars of surplus, and $600,000 of the 1 million unearned premium reserve fund, in ascertaining the book value of the stock, would you not?

A. No, sir. I would take the 5 million of capital, 4 million of surplus, and deduct the 1 million of the unearned premium reserve liability, reducing it to 3 million dollars of surplus instead of 4

Q. But my assumption was based on the theory, for the moment, that in considering the surplus you would not take into consideration the unearned premium fund at all.

A. Originally, no. But you can if you are going to talk subsequently about this unearned premium reserve fund. It is a liability and not an asset. You asked me whether you would add the $600,000. I say no, you will deduct 1 million from the surplus, because you must set up a liability of 1 million dollars for the payment of those unearned portions of the premiums.

Q. I at least haven't made my meaning clear. That is all.

Mr. Jacobs:

Q. What do you mean is, you get a million dollars of liability on the sale of insurance to the company?

A. I got a million dollar liability.

Q. Which you get rid of for $600,000 of the reserve?

A. Yes; if somebody will buy it, yes.

Q. You and I agreed a while ago that that was probably a fair figure.

A. Yes.

[fol. 1770] Q. And that would add $400,000 to the book value of your company?

A. If I sold it. There is no value unless you sell.

Q. But if you do it adds $400,000 to the book value of your company?

A. Yes.

Q. $400,000 in addition to the capital and to the surplus which existed at the time?

A. Yes, sir.

Q. Now, if you sold a $100 premium policy, you deduct $25, don't you, for commission, retained by the agent—in keeping your books?

A. Well, whatever the commission is, yes.

Q. Well, say if that is an average of 25 per cent?

A. Yes.

Q. Now, what do you do with the other that is left? How do you handle that on the book?

A. We charge 100 to premium account and credit it with them—credit it with premium account, rather, and then charge 25 per cent to expenses.

Q. Now, that is all that is charged and all that should be charged, isn't it?

A. Plus the overhead expense, of course.

Q. Well, but your overhead expense—how much do you charge up there as having been received—out of that $100?

A. The net receipts from the agent?

Q. Well, I am asking you. You have written a $100 premium?

A. Yes. If we allowed the agent 25 per cent, he would pay us $75.

Q. Well, do you enter up $75 on your books?

A. No, we enter $100.

[fol. 1771] Q. Do you enter $100 on your books to start with?

A. As a premium written, yes.

Q. And deduct $25 for the agent?

A. Charge expense with $25.

Q. Does that leave $75?

A. That would leave $75—that is, 25 from 100.

Q. That is the sum that ought to be entered up as having been received in actual cash?

A. It would be that sum.

Q. Do you make any other charge of expense at that time?

A. Whatever proportion of expense incurred in transacting the business, yes.

Q. Well, you haven't got any expense at that time in that business.

A. We have it right along, apportioned expenses.

Q. What do you add up?

A. Whatever they average expense; whatever expense is paid.

Q. What is that average?

A. Whatever expenses are paid from day to day and week to week. The average expense of companies is, say 40 per cent for all year round.

Q. Do you enter a receipt of $75 or do you enter a receipt of $60?

A. Enter a receipt of $100 and pay out 25 commission, and then we pay out all other expenses which are incurred.

Q. I understand that, but how much do you credit to your unearned premium reserve out of that money?

A. $100. That is in force. $50 on an annual premium and a proportionate amount on term policies. It is figured on the gross amount of the premium.

[fol. 1772] Q. Do you make an advance charge of 50 per cent for expenses when you receive that money?

A. We don't make any advance charges. We just put in the expenses as paid.

Q. Do you enter up then the receipt of $75 cash?

A. If $75 is received, yes.

Q. I am talking about if there is a retention of $25 for agency commission.

A. The cash book would show the receipt of $75 from the agent.

The Referee:

Q. Mr. Froggatt, let us assume that right now here in this room that a policy is issued by you upon which the premium is $100.

A. Yes.

Q. And the agent retains his commission of $25.

A. Yes, sir.

Q. Now, what bookkeeping entry would you make to cover transaction right now?

A. I would credit gross premium account with $100.

Q. Yes.

A. And I would charge commission account with $25.

Q. Yes.

A. Showing a balance due from agent of $75.

Q. Now, then, assume the agent pays the money instanter.

A. Then we credit him with a cash payment and wipe out the balance and the transaction is closed, as far as the agent is concerned.

Q. That leaves the account then standing — your books how?

A. It is wiped out now. The agent is paid and it is all done.

[fol. 1773] Q. That is not what I am getting at at all. What has the company on hand as the result of the transaction as shown by the entry on your books?

A. It would have $75 on hand as coming from the agent.

Q. Precisely. Now, what other sums than the $25 paid the agent would you now immediately upon the receipt of that money charge against that remainder of $75, if any?

A. We would not charge anything right now.

Q. That is what I want to get at.

Mr. Jacobs:

Q. What do you do with the $75, the money you get?

A. Well, we use it in the payment of expenses for conducting the business and the payment of losses.

Q. Is that all?

A. That is all.

Mr. Jacobs: That is all.

Redirect examination by Mr. Folonie:

Q. Mr. Froggatt, there is one thing the court and counsel asked you that I haven't got clear yet. I think you said in general that the estimated amount of losses in the year in general would probably in a good many cases, at least, run say ten per cent five to ten per cent, larger than they would in fact be paid when they were paid?

A. Yes.

Q. Now, as to those which were actually paid during the year, because it will correct itself through the year but at the end of the year there would still be a proportion, you said about 1/10 of the year's business, that would still be outstanding; of the year's losses that would still be outstanding and unpaid. Now, the court asked you in sub-[fol. 1774] stance if there was a 5 to 10 per cent overestimate, to use a word that will carry the meaning, on the losses through the year in general as they were estimated originally, and why isn't there that same element of error of five to ten per cent in the amount that remains unpaid

at the end of the year? In the first place, is there the same element of error in that unpaid portion that there was in the rest of it?

A. No, except that the—if you are talking about whether all estimates made and eventually paid carry with them a saving of five to ten per cent, it would prevail throughout. The only thing is that, of course, the over estimate on the outstanding at the beginning of the year are taken care of in the paid loss figure throughout the year.

Q. I understand; but what I am getting at is, is there an element of error by way of over-estimate in that outstanding unpaid figure at the end of the year, as well as what you have already taken care of?

A. Certainly.

Q. And are those figures watched closely so as to get them as close as possible when you get to the end of the year?

A. As a rule, companies generally want to get their estimates as accurate as they can for statement purposes.

Q. They don't have to be so careful at the beginning of the year, because it will correct itself through the year pretty well?

A. They don't care. They don't make any public statements then.

Q. Yes. Now, if there is 10 per cent of the year's loss unpaid remaining at the end of the year there is an element of error of 5 to 10 per cent, we will assume, in that [fol. 1775] amount. That would be ½ of 1 per cent to 1 per cent element of error, then, for the whole year's loss?

A. Yes.

Q. Now, this amount that you said, 40 per cent, more or less, that might be derived by reinsuring the business, that cannot be derived by a company while it continues in business without reinsuring, can it?

A. No, sir.

Q. In other words, they have to quit business or reinsure to get it?

A. Have to do one or the other.

Q. And if—whether they derived that amount or not depends on the character of the business and what the reinsurers are willing to pay for it?

A. That is right.

Mr. Folonie: Now, the other day, if the court please, we offered in evidence a pamphlet of "What constitutes a reasonable underwriting profit and method of determining the same." At that time I withdrew the offer, and the witness has been interrogated respecting it by counsel now, and we now renew our offer of the instrument.

Mr. Barker: We object, for the reason that it is self-serving and hearsay.

Mr. Leahy: Grows out of the examination of this witness. We have a right——

Mr. Barker: We have a right to ask you about any of your books without binding ourselves on that offer. Purely self-serving.

Mr. Leahy: The court will have no way of determining the value of the questions you have asked unless he has [fol. 1776] some way of determining. You did ask the questions about it and pointed out their method of figuring the earned premium and said it was a departure and tried to convey the idea that a process of education on the part of the companies, which finally resulted in the adoption by all companies.

Mr. Barker: Which is true. Never heard of until rating statutes were put into effect.

Mr. Leahy: Well, now, the instrument is true, and therefore competent at this time.

Mr. Folonie: We renew our offer of the instrument.

Mr. Barker: We make our objection; self-serving and hearsay.

Mr. Folonie:

Q. How many companies were doing business in Missouri in 1917?

A. The companies included in this report, which was taken from the Missouri report of 1917, were 84.

Q. How many in 1921?

A. 104.

Mr. Folonie: That is all.

Recross-examination by Mr. Barker:

Q. Allow me to ask you a couple of questions, if counsel will, please. I don't understand—for my own convenience. Under the New York law, how much do you deposit of your

unearned premium when you receive it, to constitute your reserve?

A. Don't deposit anything. What do you mean by "deposit"? We mark up a reserve?

Q. Yes.

A. We mark up a reserve. The various percentages according to annual and term policies.

[fol. 1777] Q. Haven't you testified, or is it some other witness, that under the New York law—it has been testified to six or seven times—that you had to set up 60 per cent to constitute your unearned premium reserve?

A. No, sir.

Q. You don't know, then, whether the New York law requires 50 or 60 per cent?

A. Yes, they prescribe that you shall set up 50 per cent on an annual policy and a certain percentage on term policies.

Q. On a year term policy, 50 per cent?

A. Yes.

Q. Now, you have received now, in answering the Commissioner's question, $75 from your agent, if it is a 25 per cent commission, and you have $75, have you?

A. We have $75 in cash, yes.

Q. Now, do you take $50 of that and set it up as your reserve?

A. Yes, sir; $50 of $100—no, not 50 of 75. $50 of the $100, or, say $50 of the $75 remaining, if you so choose.

Q. I think if you will just answer the question there won't be any misunderstanding. Do you set up $50?

A. I am trying to answer your question as I understand it. We set up a $50 reserve.

Q. Then of the $100 premium you set up $50?

A. Yes.

Q. You have received only $75?

A. That is true.

Q. The other $25 is put into what fund and what does it constitute?

A. Isn't put into any particular fund. It is put into the assets of the company.

Q. Is this $75 then any more of an asset than the $50 [fol. 1778] which you have set aside as a reserve?

A. No, this is all one general asset of the company.

Q. Is it a liability of the company or an asset?

A. $50 of it is a liability of the company.

Q. Now, in case the man should cancel his policy two days after it was written how much would you return him?

A. Pro rata of the entire premium.

Q. Figure it for me, will you?

A. Well, practically the entire premium.

Q. But you only got $75 from your agent.

A. Well, you are out the balance.

Q. Where do you get that?

A. Take it out of the funds of the company; out of the expense of doing business; general funds.

Q. Then you charge that as an expense?

A. Why, we have already charged it. We have paid $25 for commissions and charged it up as commission.

Q. Now, the 25 per cent estimated commission to the agent, do you estimate that 15 per cent in addition to that, making 40 per cent all together, as a fair average for the conduct of the business?

A. That is about the general average of the companies, about 40 per cent.

Q. And so treated by them, that way?

A. I don't know what you mean by "treated." That is the general experience of companies; 40 per cent, including commission.

Q. Did you testify that upon receipt of this $75 that $15 of that $75 is set to one side as a bookkeeping entry for estimated expenses?

A. No, sir, I did not.

[fol. 1779] Q. That has been testified to here?

A. Not by me.

Mr. Folonie: That is objected to; nor by anybody else, either.

The Referee: That is argumentative.

The Witness: I did not so testify.

Mr. Barker:

Q. Then there is no setting aside of $15 out of the $100, leaving a net of $60 on that $100 on the year's policy?

A. No, sir.

Mr. Barker: That is all.

Mr. Folonie: That is all.

The Referee: Just a moment. I want to get in my mind what the net result of the company is in this situation.

Q. A $100 premium is paid. Assuming that the agent deducts $25, the company has received $75 in cash; suppose the whole transaction is practically instantaneous and an instantaneous cancellation follows. Now, you have charged $25, which the agent received as his commission, to your expense account, have you?

A. Yes, sir.

Q. The company has received $75 in cash?

A. Quite true.

Q. The insured cancels the policy instanter, and we will assume that the proportion to be deducted for the time the policy was in force is so small as to be negligible, you then refund to the insured on that assumption, now, how much money?

A. $100.

Q. Then the agent has got $25?

A. Yes, sir.

Q. And the company has paid back to the insured $100?

A. Yes, sir.

[fol. 1780] Q. So that the company is a net loser by that illustration of $25?

A. That is true.

Mr. Jacobs:

Q. Now, how much would you return, then, out of this $100 in one month?

A. Well, the pro rata total, whatever it is.

Q. Short rate him on it?

A. If he applied for it, yes.

Q. Here is a table. Figure it out.

Mr. Folonie: Depends on who cancels as to whether returned pro rata or short rate.

Mr. Jacobs: Well, if the man cancels it, what happens—if the policyholder cancels?

A. The company returns 85 per cent at the end of that month.

Q. At the end of that month. Now, what about an agent? Do you allow the agent to keep that full 25, or doesn't he have to remit to the company, then, all of that commission excepting that earned part?

A. The question that was asked by——

Mr. Folonie: We object to calling for a question of law.

Mr. Jacobs: I am asking what they do, and not what the law is, whether or not the agent does not——

The Referee (interrupting): I understand the question relates to what is actually done.

The Witness: The question that was put by the Commissioner to me before was if the assured came for his policy, the company would have to return that money. The assured does not have to go through the agent. If the transaction was put through the agent's office he would return [fol. 1781] the amount of the unearned portion of the premium, retaining the earned portion of the premium——

Mr. Jacobs:

Q. Premium or commission?

A. Premium. He would pay to the assured, if he came to the agent, whatever was due the agent, and he would charge that in his account, so the company would have to pay it. Now, in the general practice of agents throughout the country he would give the company credit for the proportion of commission which he had previously charged.

Q. In other words, the agent would get, in the event of cancellation, according to the general practice, say, that proportion of his commission based upon what was actually retained by the company after the cancellation?

A. If the transaction went through the agent's office, that would be the practice.

Q. In other words, if there was a cancellation at the end of the month, the company would pay back—the insurer would get back, you say, about $85?

A. Yes.

Q. And that would mean the agent, then, instead of getting the $25, as we understood you to say a while ago, would get 20 or 25 per cent of the $15, as an actual earning?

A. Yes, that is quite true. But the question that was put to me was if the assured came into the office and canceled the policy, what would he get back. The company is responsible for the entire premium to the assured.

Q. But as a matter of fact the situation is as we just went over it?

A. Where the business is coming through the agent, the situation is just as we went over it just now.

[fol. 1782] Q. There is what they call a short rating whenever there is a cancellation by the policyholder?

A. Yes.

Q. By short rating you mean that there is a deduction made according to that table you have before you?

A. Yes.

Q. In the event of cancellation?

A. Yes, that is quite true.

Mr. Jacobs: That is all.

(Witness excused.)

[fol. 1783] Norman T. Robertson, recalled as a witness on behalf of the plaintiffs, having been previously duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. At a former hearing, when you were here, you were asked to produce some figures at an adjourned hearing, and have you those now prepared?

A. They are there, sir.

Q. Now, here, the first sheet produced by you is entitled "Percentage of expenses to premiums written." Is this for the whole United States?

A. It is my understanding that that is for the entire country, including our foreign business.

Q. And then you have at the top the years, "1917 to 1921," and under each some figures. Those are the percentage of your expenses to premium written and an average carried out, are they not?

A. That is correct.

Q. Now, below you have, "of which investment expenses were 1.00." Does that mean that 1 per cent of all your expenses in that year were 1 per cent of expenses, or 1 per cent of premiums?

A. That refers to premiums. It is all on the same basis.

Q. And the 87 100 of 1 per cent the next year?

A. Yes, sir.

Q. And so on, the figures show an average for that five years of 66 100 per cent?

A. That is correct.

Mr. Jacobs: Just a moment. You say those are the ones we requested?

Mr. Folonie: Yes.

[fol. 1784] Mr. Jacobs: They are being read into the record. You say these are the figures we requested?

Mr. Folonie: No, I requested these. It wasn't your request. It was mine, on the former hearing, and I am now asking for an explanation so it will be understood what they are in fact.

Q. From your general knowledge of the business, would you think the investment expenses of your company were proportionately higher or lower, or about the average, of the companies in general?

A. I should say about the average, sir.

Mr. Folonie: We offer the tabulation in evidence.

Mr. Jacobs (cross-examining on exhibit):

Q. Is this precentage of premiums written?

Mr. Folonie: Yes.

Mr. Jacobs: And is it the expenses of the company or expenses of investment, or what is it? Oh, I see. You have a second column here. Now, do I understand that this is year by year?

Mr. Folonie: That is right.

Mr. Jacobs: The expenses of the Continental Company, '17 to '21?

Mr. Folonie: Yes.

Mr. Jacobs: That amount of money actually paid out in expenses figured here?

Mr. Folonie: Yes.

Mr. Jacobs: What are these amounts of money? Are they expenses paid, expenses incurred, or what are these amounts of money?

[fol. 1785] The Witness: Those of course in the current year are incurred. Eventually they become paid. I should say they are all now paid.

Mr. Jacobs: You have got these amounts of money figured on an incurred basis—amounts of money?

The Witness: If you will let me see it——

Mr. Jacobs: You have $4,285,913 for 1917 under a head—is that expenses for that year of your company—that $4,285,913?

The Witness: Well, if it is under that heading I should say it is.

Mr. Jacobs: That is in 1917.

Mr. Folonie: Let him see the sheet.

Mr. Jacobs: I will read it just as it is.

Q. How did you get at that figure and what is that figure?

A. Well, it is everything that we paid out money for.

Q. Your expenses?

A. Yes, sir.

Q. Did you get it—does it represent a paid figure or incurred figure?

A. Well, as I said before, that is undoubtedly a paid figure, at this time.

Q. Well, for 1917 you arrived at it as an incurred figure, didn't you? That is how you got that money?

A. We had to set it up as incurred, yes, sir, that is right.

Q. You had to set it up as incurred?

A. Yes, sir.

Q. Now, that is true of each year here? They are all incurred expenses that you have here under these respective years?

A. Well, they became actually paid expenses. There [fol. 1786] may be some credits and there may be some debits to go against those. We can't pay our expenses every day of the year, you understand.

Q. I understand that. You know how much you paid out at the end of the year, though, don't you?

A. Absolutely.

[fol. 1787] Cross-examination by Mr. Jacobs:

Q. Now, Mr. Robertson, have you ever heard of a selling syndicate?

A. Yes, sir.

Q. What is that?

A. It is ordinarily formed of bankers or other men of standing in the financial world who get out and issue a [fol. 1788] stock or bond and guarantee that that issue will sell. If it does not sell to the public or if only a part of it

sells to the public, why, they undertake to take over for their own account whatever is left. That is known as an underwriting syndicate in the financial world.

Q. Do they ever slip an underwriting syndicate into two or three parts?

A. It is invariably done that way, as I understand it.

Q. What is a bankers' syndicate?

A. I should say that a banking syndicate would be—I am not very familiar with the banking business, but I should say that a banking syndicate would be a combination of banks for the same purpose.

Q. And what is a selling syndicate?

A. Well, the underwriting syndicate is a selling syndicate.

Q. Do they ever split the underwriting syndicate up into, say, a bankers' syndicate and a selling syndicate?

A. They may. I don't know. I am not in that.

Q. Who is chairman of your financial board?

A. Mr. George Blumenthal—I beg your pardon. I want to get it correct. We have no financial board. We have what we call a finance committee.

Q. Who is chairman of your finance committee?

A. Mr. George Blumenthal.

Q. Who is chairman of your board of directors?

A. Mr. Evans.

Q. Is he a member of your finance committee?

A. I don't think he is.

[fol. 1789] Q. Has he ever been in the last five years?

A. I don't know what that shows.

Q. How long has he been chairman of your board of directors?

A. Three years.

Q. What was he prior to that?

A. President of the company.

Q. And up to now—and after he ceased to be president he became chairman of the board of directors?

A. Yes, sir.

Q. Has he any official position in the company now, beyond being chairman of the board of directors?

A. No, sir.

Q. Do you know whether he is a member of your finance board?

A. I said we didn't have any finance board.

Q. Or committee, then?

A. I said just a moment ago that I don't know.

Q. Was he when he was president?

A. I don't know about that.

Q. Is the president of your company a member of the finance committee?

A. No, sir.

Q. You don't know whether he was a member of the finance board when he was president or not?

A. I don't know.

Q. And you don't know whether he is a member now or not?

A. No, sir.

Q. But you do know he is chairman of the board of directors?

A. I said so.

Q. And you do know that he was president of the company up until three years ago?

A. Yes, sir.

[fol. 1790] Q. And had been for how many years?

A. I don't remember the exact time he was made president, but it was a considerable term of years.

Q. A number of years, anyway?

A. Yes, sir, a number of years.

Q. Now, who is on your finance board now?

A. Well, in addition to Mr. Blumenthal there is Mr. Bliss, Mr. Davidson, Mr. Schmidtlapp, and Mr. Woodward; that is five. That is the committee.

Q. Now, do you know whether or not Evans is a member of it?

A. I said I did not know, sir.

Q. You don't know. You named all five of those there five men but you don't know whether Evans is a member?

A. Well, what I had in mind—now, I will explain it—is as to whether or not he had an ex officio place on that committee.

Q. And you don't know that?

A. No, sir, I don't know that.

Q. And don't know how it was when he was president?

A. No, sir.

Q. Do you know what the Steel and Tube Company of America is?

A. Well, it is a Steel Company.

Q. Did you ever know of any instances when any member of your company was a member of an underwriting banking or selling syndicate for stock?

A. I know of no specific instance.

Q. Did you ever know of Evans being a member of any of them?

A. I have heard him mentioned in a general way, that in past years he took a certain participation, I don't know how much, in certain underwriting syndicates, as you call them.

[fol. 1791] Q. But you don't remember the participation?

A. No, sir, I don't remember the specific ones.

Q. Let me see if I can help you on that participation. Now, the total issue of this Steel & Tube Company of America was $17,500,000, of 7 per cent preferred stock The stock was underwritten through the banking house of Dillon-Reed Company as syndicate managers. That means they were an underwriting syndicate, doesn't it?

A. Yes, sir.

Q. Now, that company, that is, Dillon-Reed & Company, took the stock at $90. The public eventually paid 98 for that stock. The difference of 8 per per cent represented about $1,500,000 and was the gross profit to the intermediate syndicate between the corporation and the general public. Now, those figures or that percentage would follow, wouldn't it?

Mr. Folonie: We object to any examination of the internal affairs of this Steel Company and we object to pursuing this line of inquiry at all, because it is entirely foreign to any proper issue in this case and leads into interminable inquiries into collateral matters which can only be confusing and are incompetent and not related to the inquiry as to the profit or loss made upon the business of insurance by this and other companies in the State of Missouri during a given period.

This court has been very liberal with counsel in permitting inquiries as to the character of securities, and nature of them, and whether they were speculative or not, and I think Your Honor has been more than generous in permitting them to go into alien matters, and in that line; but now they are proposing to go still further and try to

[fol. 1792] read into this record a lot of matter relating to syndicates and what the difference was between the amount they paid or guaranteed for something and what they sold it at to the public—and whatever its relevancy may be for publicity or some other matters foreign to this lawsuit, it certainly has nothing to do with the case we trying, and we very seriously object to the pursuing of this line of inquiry in this case.

Mr. Barker: By the way, counsel is the one who offered what was said by a lot of people up at the Astor Hotel at one time.

The Referee: I fail to see the relevancy of it.

Mr. Jacobs: I want to go into this matter to show the kind of investment experience and the matter of investment losses and investment gains, and how this matter was handled to the end of vindicating to the court our position that the question of investment experience should be considered by this court in arriving at the reasonableness of a rate in the State of Missouri.

The Referee: The thing that occurs to my mind in that connection just now is this: In the first place, your question assumes as true a number of statements with reference to the transactions with reference to which there is no proof.

Mr. Jacobs: Well, of course, we haven't got around, Your Honor, to our end of it yet.

The Referee: I understand that. But at any rate it appears to relate to the activities of a Mr. Evans, who at one time held various official positions in connection with this particular company, and now holds an official position with [fol. 1793] the company, but there is no connection so far disclosed between these transactions and the company as such.

Mr. Jacobs: Well, I want to show that. I want to show that the funds of the company were used for the purpose of making investments in stocks through an underwriting syndicate of which an officer of the company was a member, and that it resulted in losses to the company and gains to the officer and that it is part of the investment experience of this particular company and others.

The Referee: I don't assume, of course, to correct the course which counsel shall pursue in developing their evidence, but it seems to me it would be at least worthy of con-

sideration to find out whether or not this witness knows anything with reference to the matters you have last referred to, and if this witness is informed about these matters, then the question might or might not be pertinent

Mr. Jacobs: Well, he has already testified that he heard that he was a participant in certain underwriting syndicates in the sale of stock.

The Witness: Syndicates.

Mr. Jacobs: Now, I want to ask him about some matters.

Mr. Folonie: You have heard about them, too, but that wouldn't make you competent as a witness.

Mr. Jacobs: Yes, but he is president of this company and offered in the place of Mr. Evans, for whom we originally called.

[fol. 1794] The Referee: I understand those matters, but here is what we have in mind: Mr. Evans or any other gentlemen who happened to be connected with this or any other company, suppose he did participate in any such syndicate and suppose he did reap a profit thereby, unless the company's affairs were involved in the matter and unless the company's funds were used in the matter, then those private individual activities of the given individual would not be pertinent here, so far as I am able at the present time to see.

Mr. Jacobs: Well, now, let me suggest to the court our position of course is that the State of Missouri, in arriving at the question of a rate, is entitled to the entire experience of the company. The evidence has already developed in this case without any question or argument in Chicago, and in part in New York, that the State of Missourf was paying the expenses in the matter of investments and banking operations as well as in the matter of underwriting.

Mr. Folonie: Don't need to spend any time on that, because whatever expense there is that is attributable to the investment portion of the business will be eliminated from these figures before we get through them, to the best of our ability, and we have been directing evidence to that point and we will make no contention in this case that the underwriting should bear the investment expense. We don't contend that and you don't need to direct any evidence on that.

Mr. Jacobs: That is all right, but you can't sweep this aside that way. Now——

[fol. 1795] Mr. Folonie (interrupting): Pardon me, I interrupted thinking that I might shorten counsel's discussion by making the admission.

Mr. Jacobs: Well, that is an admission. Your Honor, that is not an admission. It is rather a retraction at a late date. Now, the counsels for the companies have taken the position throughout that those experiences which they have related in their annual report and other reports to the State of Missouri were the experiences on which rate should be formed in the State of Missouri, and those experiences, under the undisputed testimony of the companies' witnesses in the City of Chicago, were that all expenses of every kind and character were allocated to the State of Missouri contained in the reports to the State of Missouri, and the matter was gone into in Chicago and gone into to some extent in this city; that whether or not all expenses of every kind and character were being paid, or being paid in their proportionate parts, by the State of Missouri, and whether or not these operations and whether their losses or their gains should be considered in the light—and particularly, of course, if they were gains—in the light of the fact that the State of Missouri was paying its part of the expenses. There was no dispute and no argument about the fact that all these expenses were allocated and charged against the State of Missouri until that phase of the situation was gone into. Now, counsel suggests now that they are not going to insist that they are charged with those expenses.

Mr. Folonie: Never did.

[fol. 1796] Mr. Jacobs: And they are going to take some arbitrary figure and deduct that and say that is the part that is chargeable properly for the expense of investment operations, and at this time deduct them.

Now, we say that these reports were originally made and that the affairs of these companies, as between the two or three departments, are so inter-twined, so woven together, that there can be no proper separation that will throw any light upon this matter at all for this court.

Now, what we say is this: That since we have been so charged and since the situation stands as it does, that we are entitled to go into the question of investment operations

and investment experience—or if, as the court suggested a while ago, the companies' interests are directly involved in these underwriting syndicate operations, that then we are entitled to go into them to show this court what has transpired with reference to the money which was collected at that time as premiums and which we are entitled to consider in arriving at a reasonable rate in Missouri.

Now, the court says where is the company involved in the operations. I will suggest what I had in mind saying, particularly in one instance and maybe more, but to use one for illustration, that where there was an issue of preferred stock with a common stock bonus, which went along with the preferred stock that was sold, and where the president or the controlling factor of this insurance company, as a member of an underwriting syndicate sold to his company this preferred stock but failed to deliver to the company the common stock bonus, but retained them for himself, at a [fol. 1796] large profit to himself—money which actually belonged to this insurance company, and it stock which was paid for by the company when the preferred stock was bought. That instead of the common stock which was issued as a bonus going to this company, it was actually retained by the officer who was investing the funds of money of the company. And the court will recall that in these investment operations there is a mingling and no separation whatever between the premiums and the surplus and the other moneys of the company; that they are all mingled together and losses paid out of them and expenses paid out of them and investments made out of them. And these moneys, which must have included part of the premium moneys, were actually invested in stocks and the bonus part of the common stock retained by a member of the company who was likewise a member of the syndicate which sold to the company.

Mr. Lewis: What company is that?

Mr. Reynolds: Continental Company.

Mr. Wilson: The question that is now before the court is, as relates to purported facts which cannot be made to appear, and I think it can be very much simplified by asking the witness one question to inform anything about the transactions of this character that is whatever the cause of it is. I think in the indicated

by his answer that he has heard of these things. I think if he answers he knows, then we can have another question as to what he knows about it, and we will make our objections, but if he does not know there is no use spending a lot of time on hearsay.

[fol. 1798] The Referee: That is substantially what I meant to suggest to counsel for the defendant a few moments ago; that we may or may not spend quite a good deal of time in preliminary questions here without making the necessary connection. It is entirely possible. We might save a good deal of time if the connection of the company with this particular enterprise—if there were such a connection—were put in. He could show them with the witness on the stand whether or not to go into the details.

Mr. Jacobs: Well, let me ask this question, then:

Q. Do you know how much of the preferred stock of the sugar—the Sugar Line Company was purchased by the Continental Fire Insurance Company?

A. No, sir.

Q. Do you know whether or not stock was bought in that manner?

A. It is my understanding that they had a block of that stock at one time. Just how much I don't know.

Q. Now, your books would show how much of that Sugar Line stock your company bought, wouldn't it?

A. Approximately.

Q. And your books would show whether or not there was a gain or loss upon that stock?

A. They would.

Q. Now, you know that they did buy Sugar Line stock, don't you?

A. I have admitted it.

Q. Now, let me ask you if in that particular instance there were not 2,000 shares of common stock issued along with the preferred stock at [illegible]?

A. I can't say. I don't know, sir.

Q. You don't know that?

A. No, sir.

[fol. 1799] Q. Do you know whether or not there was common stock issued with the preferred in that particular instance?

A. No, sir.

Q. Do you know whether or not your company in the purchase of this Cuba Cane stock received preferred and common or preferred or common?

A. No, sir, I don't know.

Q. Now, do you know whether or not an official of your company was a member of a member of the syndicate which sold that particular stock to your company?

A. I don't know definitely. As I said before, it is the underwriting syndicates of which I have heard, just in a general way. I do not feel competent to testify one way or the other on that point.

Q. Well, the Cuba Cane was a pretty big transaction, wasn't it?

A. It sounds so, from the figures you read.

Q. And have you anything to do with the Fidelity Phenix?

A. No, sir.

Q. Or with the American Eagle?

A. Yes.

Q. What is your official position with the American Eagle?

A. I am director on the board of the American Eagle.

Q. Do you know whether the American Eagle likewise acquired some of this Cuba Cane stock?

A. No, sir.

Q. Do you know anything about that?

A. No, sir.

Q. And you are chairman of the board of directors?

A. No, sir.

[fol. 1900] Q. What are you?

A. Member of the board of directors.

Q. Are you an official of the company, beyond being a member of the board of directors?

A. No, sir.

Q. Is Mr. Bruce connected with the American Eagle?

A. He is chairman of the board of the American Eagle.

Q. Director—chairman of the board of directors?

A. Yes, sir.

Q. What is his connection with the Fidelity Phenix?

A. He has the same connection with that. He is chairman of the board, and a director.

Q. Do you know whether or not the Fidelity Phœnix acquired any of this Cuba Cane stock?

A. No, sir.

Q. But you do know that your company, the Continental did?

A. That is my impression, that we were in that security at that time.

Q. Now, let me ask you this: Didn't the Continental acquire $[illegible] worth of this preferred stock?

A. I don't know.

The Referee: Of what company?

Mr. Jacobs:

Q. Of the Cuba Cane?

A. I don't know, sir.

Q. Do you know whether that is approximately a correct figure?

A. No, sir, I don't.

Q. Do you know whether or not it paid, as a matter of fact, $[illegible] for stock in that company in cash?

A. No, sir.

[fol. [illegible]] Q. Do you know whether it sold the same at a loss of $[illegible]?

A. No, sir.

The Referee: What is the answer?

The Reporter: He said "no."

Mr. Jacobs: Do you know whether or not as a matter of fact it was the preferred stock which this company bought, and that it received no part of the common stock issue?

Mr. Lewis: He has answered that.

Mr. Jacobs:

Q. Do you know that, or not?

The Referee: He may answer.

(To which action and ruling of the referee plaintiff by counsel then and there at the time duly excepted and still excepts.)

A. No, sir, I don't know it.

Mr. Jacobs:

Q. Can you do this, Mr. Robertson: I would like your book record showing the participation or the purchase of stock by the Continental and the American Eagle companies in Cuba Cane. That is one thing I would like to have.

Mr. Folonie: Don't answer.

Mr. Jacobs:

Q. Are you willing to produce them?

Mr. Folonie: Just a minute. I would like to ask him a question as bearing on the necessity or propriety of producing it, if the court please.

The Referee: Very well.

Mr. Folonie:

Q. Mr. Robertson, do your reports to the State of Missouri, filed with them, your annual reports, show all of your transactions respecting all your securities, when bought and [fol. 1807] when sold, the amount paid, when acquired, the amount derived when sold, the profit or the loss on the security, when disposed of—do all these matters appear in detail on these reports?

A. Absolutely, in every detail.

Mr. Folonie:

Q. The person from whom bought and the person to whom sold?

A. Well, I think so. I am not sure about that last point.

Mr. Folonie: If the court please, this information being in these reports—and we have no objection, if they are competent, to their being produced—we object to the necessity of having this witness go through his records and duplicate the information already in the possession of the defendant.

The Referee: Is there any question about that information being contained in the reports?

Mr. Jacobs: These reports show the stock bought and the disposition of it, and the losses or gains on it.

Mr. Folonie: And shows the person from whom bought and to whom sold and the amount of profit or loss on it, the date when bought, the date when sold—the one of the Home Company was introduced here the other day as an exhibit. If the reporter has it here, Your Honor will see that it is in the most intimate detail.

Mr. Jacobs: I think those facts are in the annual report.

The Referee: Then would it not be a duplication?

Mr. Jacobs: It would be to the extent of what is in the report.

The Referee: Well, is there any desire to duplicate that which is already available to the defendant?

[fol. 1803] Mr. Jacobs: No, not what is in the report.

The Referee: Then your question, I suppose, if any remains, would relate to such matters as do not appear in those reports?

Mr. Jacobs: I suppose so.

The Referee: I would suggest that you re-frame your question so as to cover that.

Mr. Jacobs:

Q. Do you recall, Mr. Robertson, that this particular stock which your company bought, Cuba Cane, was sold at a loss of $132,740?

A. No, sir.

Q. You don't recall that and haven't any recollection of that incident?

A. None at all.

Q. None whatever. Do you recall that the stock acquired in the same company by the American Eagle was sold at a loss of $21,929?

A. No, sir.

Q. Have you ever discussed with Mr. Evans what his participation amounted to in the underwriting syndicate which sold to the Continental of the Cuba Cane company?

A. No, sir.

Q. Have you ever discussed with Mr. Evans what became of the common stock bonus which was issued with this preferred?

A. No, sir.

Q. Did Mr. Evans ever tell you that he received as an underwriting profit on the common stock which was furnished as a bonus, for himself, $19,872.40?

A. No, sir.

Q. Did you ever discuss that with him?

A. No, sir.

[fol. 1804] Q. Have you ever discussed any of his syndicate—underwriting syndicate operations, with reference to their relations to the sale of stocks in either the Continental Company or the American Eagle or the Fidelity Phenix?

A. The only information that I have on that subject is that at a general meeting of the officials of our company, such as we have at lunch time, I have heard Mr. Evans say that he has been in several of these syndicates; as to whether he meant that he had been in for the company or just for his own account, I don't know. He further said that there was little if any profit in the long run and that he did not believe in them and that he discontinued them and was not going into any more of them. That is practically all the information I have on the subject.

Q. Some of this stock was sold as late as 1921, was it not?

A. I couldn't say, sir.

Q. And some of it was acquired in 1919, wasn't it?

A. I don't know, because my job is the underwriting and not the financial end.

Q. Mr. Evans says his syndicate operations, after the investigation of the Lockwood investigating committee—he ceased them after the investigation of that committee, didn't he?

A. I don't know, sir.

Q. Did the joint legislative committee—or the joint legislative committee of this state?

A. I don't know.

Q. The final report of which was published in 1923?

A. I couldn't answer that.

Q. He has only recently ceased his syndicate operations, hasn't he? He got sick, you say, last July?

A. Sick?

[fol. 1805] Q. Or to be sick?

A. Well, I have so testified here. I don't wish to retract it. He has been ill since last January. He has been away from the office continually since the 24th of last July.

Q. And of course since he has been sick, you say, he has not been actively engaged in business?

A. No, sir, absolutely not.

Q. But prior to that time he was busy with his syndicate operations, wasn't he?

A. Well, I couldn't say as to that, because I don't know.

Q. You don't know. Now, you, as president of the company, keep pretty good track of what this company is doing, don't you?

A. Just as close as I can, sir.

Q. Yes. Well, then, let me ask you if your company bought stock in the Steel & Tube Company of America?

Mr. Leahy: He has answered that question.

A. I don't know.

Mr. Jacobs: You don't know?

A. No.

Q. Do you know whether Mr. Evans was a member of the selling syndicate or the underwriting syndicate which sold the stock of the Steel & Tube Company of America?

A. No, sir.

Q. Don't know about that. Do you know whether or not your company bought stock in the B. F. Goodrich Company?

A. No, sir.

Q. How?

A. No.

Q. You have no recollection or knowledge of that at all?

A. No, sir.

[fol. 1808] Q. Do you know whether or not Mr. Evans was engaged as a member of the underwriting syndicate which sold the stock of that company?

A. No, sir.

Q. You don't know anything about either one of those sales?

A. No, sir.

Q. Do you know whether or not your company bought Pierce Arrow Motor Company's stock?

A. We bought Pierce Arrow Motor Company's stock, I think it was the preferred; I don't know how much. I remember seeing the matter in one of the statements.

Q. Now, do you know whether or not Mr. Evans was a member of an underwriting syndicate which sold the Pierce Arrow Motor Company stock?

A. No, sir.

Q. Never heard of that?

A. I think I have heard that we bought stock.

Q. Do you know whether or not there was a common stock issue in the nature of a bonus which went along with the preferred stock of this company?

A. No, sir.

Q. Your company just got the preferred, didn't it?

A. Well, if it is any insinuation against Mr. Evans——

Q. (Interrupting.) No insinuation. I am asking you about facts. I am going to ask you specifically about what Evans' profits were.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

A. My answer to that is, while I am not familiar with the transaction, I am willing to affirm very positively that the company got every dollar that was coming to it, whether preferred or common.

[fol. 1807] The Referee: Pardon me. The question simply relates, as I recall, to your knowledge of whether the company did get common or preferred or which, if you know.

A. I don't know.

Mr. Jacobs:

Q. Now, did you read the final report of the Lockwood Investigating Committee, so-called, the joint legislative committee of this state?

A. Yes, sir.

Q. Now, I will ask you—if you say that the company got all it had coming to it—I will ask you if this investigating committee did not make a finding which you read?

Mr. Folonie: We object to reading the finding into the record, if that is proposed.

Mr. Leahy: Can't be to enlighten the court. It must be for some other purpose.

Mr. Folonie: This line of inquiry, starting to show that the expense of investment was being charged to the State of Missouri in its underwriting activities. Now, he is proposing to read what some legislative committee found about something or other about some officer, supposed to have derived some kind of benefit from an underwriting syndicate, and we object to pursuing the line of inquiry and purporting to read into the record any such supposed finding of any legislative committee.

The Referee: I think it can be safely assumed that the court will give at least approximately correct value, evidenciary value, if any, to any quotation or purported quo-[fol. 1808] tation from any report. The question so far as framed in substance amounts merely to whether or not this witness read something in a report. I take it it is preliminary.

Mr. Jacobs: What was the question?

(Question read by the reporter.)

Mr. Jacobs (addressing the stenographer): Add "and which is as follows." "There were $500,000 shares of 7 per cent preferred stock and 450,000 shares of common stock issued by the Cuba Cane Sugar Company. The preferred stock had a par value of $100, while the common stock had no par value. The bankers handling the issue were the J. N. W. Seligman (?) Company. The concern agreed to pay 50 million for the preferred stock, with a common stock bonus. The 450,000 shares of common stock were received and distributed as bonuses to the purchasers of preferred stock. There were about 200 members in the syndicate. Among them was a company officer who had a participation interest in the syndicate of 1,000 shares of preferred and 700 shares of common. The Continental Fire Insurance Company acquired $850,000 worth of this preferred stock, without the bonus, for which it paid $822,-230. Subsequently it was sold at a loss of $172,740." Now, did you read that report?

A. I read what I thought was a complete report. I don't recall that part of it; possibly it was not the complete report.

Q. Is this correct, what I have read?

A. I don't know, sir. I couldn't say.

Q. You don't know anything about that?

A. No, sir.

[fol. 1809] The Referee: It is now after one o'clock, gentlemen. Shall we adjourn for luncheon?

Mr. Jacobs: Any time that suits the court.

The Referee: Well, we will adjourn until 1:45. It is now 1:15.

(Whereupon an adjournment was taken until 1:45 o'clock in the afternoon of the same day, at which time parties reconvened at the same place and the following proceedings were had):

NORMAN T. ROBERTSON, recalled as a witness for further cross-examination on behalf of the defendant, was further examined and testified as follows:

Mr. Jacobs:

Q. Now, Mr. Robertson, your exhibit which was introduced this morning, being plaintiffs' Exhibit 819, purports to show an exact percentage for the five year period with a subdivision of investment expense, is that right?

A. Yes, sir.

Q. Now, you have got down under each year a sum of money, for example, 1917, $4,285,913.

A. Beg pardon. Is that four million or $482,000?

Q. No, $4,285,913.

A. Not referring to the investment exhibit alone? You mean the general expense?

Q. General expenses.

A. I think that is right.

Q. Now, you figure a percentage. Now, all your calculations heretofore have been based on the question of premiums earned, haven't they?

A. The losses were figured on premiums earned of necessity. Expenses are figured on premiums written, sir.

[fol. 1810] Q. So you figure that you should use premiums earned as the basis for your underwriting experience, generally speaking, don't you?

A. Yes, sir; we are obliged to.

Q. You say you are obliged to. Now, in arriving at this figure of $4,285,000, are those actual expenses or are those incurred expenses?

A. I should say at this time they are all paid. When they were put down there——

Q. (Interrupting.) You don't know what happened to them. They originally were secured on an incurred basis, weren't they?

A. They started out that way. As we go along through the year certain expenses are paid and others are estimated as they accrue. When you get through your year you will have your expenses mostly paid and comparatively few items still in the estimated column. One or two months, maybe.

Q. At any rate, these were originally the result of incurred expenses—figured as incurred expenses?

Mr. Folonie: We object to assuming that after a lapse of a period of years there would be any difference between incurred and paid. They would be identical.

Mr. Jacobs:

Q. I am asking you if as a matter of fact they were originally figured as incurred expenses.

A. I think I have answered that, to the effect that most of those were expenses——

Q. (Interrupting.) That is not an answer. I am asking you if you originally—if those figures were the original result of an incurred calculation?

A. You begin with that, sir; but as I also stated——

[fol. 1811] Q. (Interrupting.) You don't really begin with it, do you? You get it at the end of the year, don't you?

A. No, you set it up from month to month.

Q. Don't you get your incurred expenses or losses of the year by calculation at the end of the year?

A. Are you referring to losses or expenses?

Q. Either one of them.

A. Well, they come along from month to month. We start out with the month of January and that is necessarily on an estimated basis. Then when we have two months, we have one month actual and one month estimated. When we have twelve months we have eleven actual and one month estimated.

Q. Why do you estimate expenses?

A. Well, because you don't know exactly what they will be.

Q. Why do you estimate them at all, then? Why don't you wait until you pay them?

A. They may not be due.

Q. Well, you haven't paid out anything until they are due, have you?

A. No, but we are constantly paying.

Q. Well, why don't you wait until you pay something before you begin to figure in the expense at all? Why do you make an estimate for the first month?

A. Because it wouldn't show the true status of affairs. For instance, if we rent a house we don't have to pay for it until the end of the month, we will say. If you were going to make up the exact dollars and cents statement of your worth you would have to say exactly how many days you had occupied that house and what you owed for rent there, even though you had not paid him, and I think this is exactly a parallel case.

[fol. 1812] Q. You don't figure your experience except at the end of the year?

A. Yes, sir; every month.

Q. Not till the end of the month, do you?

A. No.

Q. Why do you make an estimate for the month before? You know, at the end of the month, what you have paid out?

A. Yes.

Q. Why do you make an estimate of it at all?

A. Because we want close track of everything. We don't know whether we are making or losing money unless we charge up these things on paid and incurred basis.

Q. You wouldn't know whether you were making or losing money—how do you know your experience is right?

A. Our experience is right and it doesn't vary.

Q. Then why don't you wait until the end of the month and figure your expense as paid that first month?

A. Because it would not show the true status of affairs. For instance, some of the rating bureaus or some of the—well, take the best illustration I know of, is the income tax that we pay to the government; paid quarterly. Now, in getting up a statement of the company's affairs, on the result of the previous year, we would certainly be very foolish if we didn't set that up as a liability. Our statement would be of no value and would not be accepted.

Q. But you are talking about the first month of the year. You say you make an estimate. You balance your business monthly?

A. Yes.

[fol. 1813] Q. It doesn't—you say that your estimate is based upon an average that does not vary enough even to notice.

Mr. Folonie: I object to that. He has not said on an average that doesn't vary enough to notice. He said the variation is not enough to notice. He didn't say anything about an average.

Mr. Jacobs: Well, one way or the other, it doesn't make any difference to me.

Q. The point is if you have knowledge, the fact that you provide an estimated expense does not throw any light on your financial condition for your first month, does it?

A. I disagree with you.

Q. And you think that you couldn't wait until the end of the month and take the expenses actually paid?

A. Well, not and make a true statement.

Q. So at the beginning of the month you make an estimate of what you think expenses will be for the month?

Mr. Folonie: Object to that. He has not said anything of the kind.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Read the question.

(Question read by the reporter.)

Mr. Jacobs:

Q. Is that right?

A. Well, I don't think that is—I shouldn't have said the beginning of the month; at the beginning of the month you haven't anything to go on.

[fol. 1814] Q. Certainly not. But didn't you say a little while ago that for the first month, for that month you had to make an estimate for the beginning of the month?

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A. I said it and I mean it.

Q. Well, then, your counsel is wrong about his objection a moment ago, isn't he? You did say it. That is right, is it?

A. Yes.

Q. Now, Mr. Robertson, in the matter of expense, you balance your books at the end of the month. Why don't you wait and see what you actually pay out in expense that month?

A. I don't consider that is good business practice.

Q. Very well. Now, you are estimating the experience of your company and we are particularly interested, of course, from the standpoint of a rate making body in the State of Missouri, and you use the earned premiums as the basis of your calculations, don't you, to arrive at a result?

A. In expense?

Q. In anything. In your year's experience?

A. No, sir. We use the written premiums for expense and earned premiums for losses.

Q. You use earned premiums and start out—to start out with as a basis of your calculations?

Mr. Folonie: Object, unless he states calculating what.

Mr. Jacobs: I am talking about this experience as they appear in the reports annually to the State of Missouri.

Q. Do you use earned premiums as the basis for your calculations when you are arriving at a percentage——

[fol. 1815] Mr. Folonie: Talking about profit or loss or what?

Mr. Jacobs: Your profit or loss or anything of the kind that you are concerned in.

A. We use earned premiums in estimating profit and loss.

Q. Now, as against that earned premium basis, you figure your expense incurred and losses incurred, don't you?

A. Yes.

Q. But when you brought in this Exhibit 819, in order to give the court the percentage, you figured your expenses against your premiums written?

A. Yes, that is right.

Q. But if you were figuring a profit and loss you would figure the money which amounts to your incurred expenses against an earned premium basis, wouldn't you?

A. The losses on an earned premium basis, yes, sir.

Q. And expenses the same way, wouldn't you?

A. No, sir. Expenses on a written basis.

Q. Expenses on a written basis. Then do I understand that you have got certain written premiums for a year and you want to get the percentage of your profit or loss, that you don't figure your losses and expenses incurred against those earned premiums to get the percentage of profit or losses, do you?

A. I have just explained that the losses are necessarily figured on the earned premiums and the expenses on the written.

Q. Well, do I understand, then, that in arriving at profit and loss for a year's experience that you are willing to say now that it is improper to figure the expenses against the earned premiums?

[fol. 1816] A. I don't think that is the right method.

Q. You think they ought to be figured against the premiums written?

A. I think all expenses should be figured against premiums written.

Q. Well, now, when you figure your expenses incurred—which is the basis you use?

A. We use expenses incurred and the expenses estimated. Those two elements in there you can't get away from.

Q. Your expense is incurred and your loss is incurred. You take those sums of money and add them together, don't you—you add together and figure them against your earned premiums for the year in order to arrive at your percentage of profit or loss, don't you?

A. There is just one way of figuring profit or loss and that is——

Q. (Interrupting.) Just answer the question, whether you do what I asked you.

A. I don't understand.

The Referee: Read the question.

Mr. Jacobs: Read the question, Mr. Mr. Blume.

(Question referred to read by the reporter.)

A. I don't know just how you would figure it out as a bookkeeping transaction. There is just one way to figure the underwriting profit, and that is to deduct from earned premiums, expenses and losses. There is no other method.

Q. Now, that is all right, Mr. Robertson, but there has been a lot of testimony here about the method of figuring profit and loss for an underwriting experience. It has been universally said, and I think you are one of the witnesses [fol. 1817] who testified to it, that the basis of those calculations was earned premiums. Is that right?

A. As to losses, yes, sir.

Q. Now, do you take your losses and expenses incurred and add them together and calculate them against your earned premiums in order to arrive at a percentage of profit or loss?

A. Well, I don't know that it is necessary to add them. All you need to do is——

Q. (Interrupting.) Well, just answer me whether or not you do that, Mr. Robertson?

A. Your expenses and your losses are deducted from your earned premiums to arrive at a loss or profit, as the case may be.

Q. Now, you say your expenses and losses are deducted from the earned premiums to arrive at your profit or loss?

A. Yes, sir.

Q. In other words, you mean incurred expenses and incurred losses, don't you?

A. Well, both premiums and losses necessarily partake of both——

Q. (Interrupting.) Mr. Robertson, I asked you if you meant by that in arriving at your yearly business, your incurres and your incurred expenses?

A. Deducted from earned premiums?

Q. Yes.

A. Yes, right.

Q. Is that what you mean?

A. Yes, sir.

Q. Now, I notice here that your expenses incurred from 1917 to 1921 increased from $4,285,000 to $7,125,000. There was that increase in your expenses. Did you have an ascending scale of business during that period?

A. Yes, sir.

[fol. 1818] Q. And you think that there is such a thing, practically speaking, as incurred expenses?

A. Yes, sir, I do.

Q. You differ with the testimony of some of these witnesses that saying there is no such thing, practically speaking, as incurred expenses?

Mr. Hogsett: We object to asking this witness to compare his testimony.

Mr. Jacobs: Withdraw that.

A. I haven't heard the other testimony.

Q. Now, out of this expense you figured, in order to get the percentages which you gave to the court, which range from 37.17 per cent to 43.97 per cent, as an expense ratio, you arrived at this percentage those percentage ratios, by figuring these amounts of money against your total premiums written, didn't you?

A. Absolutely.

Q. Now, of course, if you had figured them against your earned premiums your expense ratio would have been lots bigger, wouldn't it?

A. I don't know whether it would or not. It would depend on the way your business happened to go.

Q. Well, you know you have got an ascending scale of business in that five years, don't you?

A. Well, it was ascending part of the time. It may have gone down during the time.

Q. Your expense account ran from 4 million to 7 million—from the first year to the last year, didn't it?

The Referee: Of this five year period?

[fol. 1819] Mr. Jacobs: Of this five year period.

A. If it is so shown I would say it is right.

Q. Well, they are your figures. You know, then, that your written premiums were much greater than your earned premiums. They always are, aren't they?

A. Your written premiums are much greater than your earned premiums?

Q. Yes, written premiums are much greater than your earned premiums?

A. No, sir.

Q. They are on an ascending scale of business? Of course, I am talking about the ascending scale of business, which I asked you about a moment ago.

A. Well, on an ascending scale of business, unless you radically change the character of that business, why, your unearned premium would go up without question. On the other hand, if you stop writing a good many term policies and confine yourself to annual policies or less than a year, you might even go down.

Q. Well, let's get down to the facts.

A. I am giving you the facts.

Q. Your company did an ascending scale of business during the five-year period we are discussing, didn't it?

A. I will refer to this thing here and give it to you more accurately (witness refers to printed table). Our business increased in 1918 over 1917; 1919 over 1918; 1920 over 1919, but dropped down in 1921.

Q. Yes, there wasn't quite as much business in 1921, was there?

A. No, sir.

Q. In other words, as a general thing you had an ascending scale of business throughout the period, didn't you?

A. The net result was an increase.

[fol. 1820] Q. The net result was an increase?

A. Yes, sir.

Q. And your expense ratio, or your expenses, I mean, followed right along with your increase and decrease, didn't it? You say in 1918 you had more business than you did in 1917?

A. Yes, sir.

Q. And in '17 you had $4,285,913 expenses. In '18, with an increased business, you had $5,441,267 expenses. Now, you say in '19 it increased over '18. In '19 you had $6,318,177 expense; or an increase. Now, you say '20 was an increase over '19?

A. Yes, sir.

Q. And in '20 you had an increase in your expenses so that your expenses were $7,482,877 as against $6,318,000 the year before, or a little over a million dollars increase in expenses, didn't you?

A. Yes.

Q. Now, '21 you had somewhat less volume than you had in '20?

A. About a million and a half less.

Q. So with $7,482,000 expenses as in '20, you had $7,125,413 expenses, didn't you?

A. Yes.

Q. Your 1921 business of course was much greater than '17, '18 and '19, and somewhat less than '20, is that right?

A. Yes, sir.

Q. And your net—you had a net increase on the five-year period?

A. Yes, sir.

The Referee: Net increase in the volume of business?

Mr. Jacobs: Yes, sir.

The Referee: How about expenses?

Mr. Jacobs: And in the volume of expenses.

Q. You had a considerable increase in the volume of expenses, didn't you?

A. I assume that is correct. I am not looking at the figures, myself.

[fol. 1821] Q. You had almost $1,200,000 increase in 1918 over 1917. You had almost a million increase in '19 over '18.

A. May I ask—may I make a suggestion about looking at the expense? If you would look at the percentages it would be——

Q. (Interrupting.) Well, you had over $1,100,000 increase in '20 over '19, and then you had about $350,000 decrease in '21 over '20. So you had a vast increase in expenses throughout the whole period, didn't you?

A. It was substantial. I don't know that I would say vast. It was more than we wanted.

Q. You then go on here and assume to set out investment expenses for '17, '18, '19, '20 and '21, and you put on certain figures—$115,372, $119,155, $128,112, $64,200, $70,306. Now, where did you get those figures?

A. Well, those are the actual figures as we were required to make them by the various blanks that we have in the state departments. That is not arbitrary on our part.

Q. Well, how did you get at them?

A. Well, we figure up the salaries and the rent and light and everything of that kind that are utilized by the people connected with that department.

Q. Well, you haven't got a distinction between your employes, have you?

A. Yes, sir.

Q. And your quarters? How do you split the rent?

Mr. Folonie: We object to reiteration of that. He told all about that when he was here before; even went into the question of rent and how it was divided up between, and he has been all over that in detail.

[fol. 1822] The Referee: That matter was gone into with some witness.

Mr. Folonie: This witness.

Mr. Jacobs:

Q. You don't mean to say, do you, that the state department fixed any method by which you divided your underwriting expense from your investment expense, did they?

A. That is my understanding, yes, sir.

Q. Do you mean to say they told you what you count in and what you take out?

A. Yes, sir.

Q. That they actually gave you the method?

A. Yes, sir. I asked the treasurer about it just before I left the office and he told me that was true.

Q. That they fix that for you?

A. They do.

Q. You take the salaries of officers, they are all charged against underwriting, aren't they?

A. No, sir.

Q. Well, how do you split your president's salary? What percentage? How do you get at the figure?

A. The only salaries charged in there——

Q. (Interrupting.) Which place?

A. In the investment end. I understand that is what you have in mind?

Q. Yes.

A. The only salaries charged in there are those actually incurred for people that are in the financial department.

Q. Clerks and stenographers?

A. Yes, sir.

Q. And people like that?

A. Yes, sir.

Q. How about the president and vice-president, secretary and treasurer and all these other officials, where are their [fol. 1823] salaries counted?

A. Well, as I understand it, there is the treasurer, assistant treasurer, and assistant secretary, who have exclusive charge and control of the financial department, and 80 per cent of their salaries, 80 per cent of all the clerks' salaries in the department, are charged against this, and there are no other salaries charged in that.

The Referee: Charged against the investment end of the business?

A. Yes sir.

Mr. Jacobs:

Q. 80 per cent of what salaries besides the clerks'? Salaries of the treasurer——

A. (Interrupting.) Salaries of the treasurer, assistant treasurer, and assistant secretary, in that financial department.

Q. Well, now, isn't it a fact that your entire salary account is pro rated to the State of Missouri in your reports? Your entire salary account?

Mr. Folonie: Just a minute. We object to how it is done in the Missouri reports, as the witness is not testifying he has anything to do with those.

Mr. Jacobs: That is not an objection. It is a statement to the witness.

Mr. Folonie: My objection is to confusing reports to Missouri with the witness' present calculation, made from the books, and records, of his company. They are two distinct things and we object to the form of the question as confusing.

The Referee: In answering the question, make whatever distinction in fact exists, to your knowledge.

[fol. 1824] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Read the question to him, Mr. Blume.

(Question read by the reporter.)

A. I don't know, sir.
Q. You don't know?
A. No, sir.
Q. May be or may be not?
A. Absolutely.
Q. Now, I notice a curious thing in your report here. You had an expense in 1920 of $7,482,873, and you had an expense in 1917 of $4,285,913, or $3,200,000 less in '17 and '20; indicating that in 1920 you had a much greater volume of business than you had in 1917, doesn't it? Just read these figures. What have you got in 1917 and '20?

Mr. Folonie: In premiums?
Mr. Jacobs: Yes.

A. Premiums, $11,536,000.
Q. When?
A. 1917.
Q. Yes.
A. 1920, we had $18,789,000.
Q. Over 7 million dollars more, didn't you?
A. Yes, sir.
Q. And yet your investment expenses in '17 were $115,000 and your investment expenses in '20 you have got down to $64,000, is that right?
A. Will you allow me to see the paper a minute? I think maybe I can explain it. Yes, I can tell you that.
Q. Well, what I asked you is correct, isn't it?
A. Yes, sir, that is correct.

[fol. 1825] Mr. Hogsett: Now, are you going to give him an opportunity to tell you?
Mr. Jacobs: Yes, sure.
Mr. Hogsett: Finish your answer now.

A. That was due to the fact that in 1920, or just prior to 1920, we sold a building in Brooklyn; went into that account. The carrying charges on that building and the expense of operating it.

Mr. Jacobs:

Q. You mean by that that just before 1920, you sold a building?

A. Yes; prior to that decrease.

Q. Prior to 1920, you sold a building?

A. Yes, sir.

Q. And what did you do with the money?

A. Well, the money went into the company's assets.

Q. Invested in?

A. Why, certainly.

Q. Did you get another building?

A. No, we haven't replaced that building.

Q. Have you got any other building?

A. Yes. We have several buildings. We have one building left in Brooklyn and a home office building and one in Chicago and one at San Francisco.

Q. You had four buildings and you sold one and have three left?

A. We have acquired two buildings in the meantime.

Q. Since then?

A. Yes, sir.

Q. So you had five, sold one, and that left you four—was it four you had—sold one and acquired two, is that right?

A. That is right.

[fol. 1826] Q. So when did you acquire these two?

A. Well, last year we started the construction of one in Chicago that was finished this year, and last year we bought one out in San Francisco which we now have.

Q. Now, it is my understanding that you by the sale of one of these four buildings reduced your expenses of investments from $128,000 to $64,000?

A. That is the experience that was given me.

Q. In spite of the increase of 7 million dollars in volume of business in '17 and '20?

A. Yes, sir.

Q. You have the investment expense of all that 7 million additional money, didn't you?

A. I don't know enough about the financial end to explain it further.

Q. And in addition to that you had the investment of the proceeds of the sale of that one of your four buildings, didn't you?

A. Yes, sir.

Q. Now, what were your total assets invested in 1920?

A. Total assets, $40,857,878. Not all invested. We can never invest all of our assets, because some of them are in the shape of money in the mails and agency balances and things of that kind.

Q. So in 1920, you were handling assets of $40,000,000 or somewhere in that vicinity and for $64,200 expense?

A. Yes, sir.

Q. How much was that building sold for that you sold?

A. I don't know.

Q. Any idea?

A. No, sir.

Q. Was it as much as $250,000?

A. I don't know.

[fol. 1827] Q. Didn't amount to very much in your total assets, did it?

A. I don't know.

Q. Don't know anything about it. I was asking you about some of these investments before lunch, Mr. Robertson, and I believe you told me that you were also a member of the board of directors of the American Eagle Fire Insurance Company, didn't you?

A. Yes, sir.

Q. You recall this investigation, so called, don't you?

A. Yes, in a general way.

Q. You recall Mr. Evans testified in it, don't you?

A. Yes, sir.

Q. Did you testify?

A. No, sir.

Q. You knew by the fact that Mr. Evans testified, and I presume by your general knowledge of your company's business, that the Continental as well as the Fidelity Phenix and the American Eagle were under investigation by this committee, didn't you?

Mr. Folonie: We object to that as calling for a conclusion.

Mr. Jacobs: I am asking him if he knew it.

A. No, sir.

The Referee: Well, did you or not know that your company was under investigation by this committee?

A. I did.

Mr. Jacobs:

Q. Now, naturally, as president of the company you were interested in that?

A. Yes, sir.

Q. Followed it closely, I presume?

A. With a reasonable degree of scrutiny, yes.

Q. Read the report?

A. I read part of it.

[fol. 1828] Q. Discussed the matter, I have no doubt, with Mr. Evans, didn't you?

A. Why, I listened to what he had to say. I don't offer any comments.

Q. You mean you listened to him testifying, or listened to your discussions at your company offices?

A. Only to the discussions at the lunch table.

Q. Did you ever hear him testify before the committee?

A. No, sir.

Q. But you heard his discussions at the dinning room table?

A. Yes, sir.

Q. You mean at the table at your company headquarters were the officers together each day?

A. That is right.

Q. And the discussion—he discussed his testimony, did he?

A. In a general way; here and there.

Q. Here and there. Now, among the places that were "here," let me ask you if he discussed the following——

Mr. Folonie (interrupting): Do you claim it is not "there"?

Mr. Jacobs: He said, "here and there." I am taking the "here."

Mr. Folonie: Purporting to read from something when it is not there.

Mr. Jacobs: No, it is here.

Mr. Leahy: Well, what isn't that is there.

Mr. Jacobs: I am going ahead and read it when the objection is finished:

Mr. Hogsett: I want to object to this: The court has been very liberal in the admission of evidence, and properly [fol. 1829] so, but when we reach a point where a witness

is asked under the guise of cross examination whether he knows that another man, who is not a witness, said certain things in a certain investigation not in any way connected with this one and which this witness didn't attend, then I submit that we are wandering so far afield that it can't possibly throw any light on any of the issues before Your Honor.

Mr. Folonie: Can't anything but campaign material.

Mr. Jacobs: What he said is an admission. I am asking him now if he discussed the following.

Mr. Hogsett: I say to you that your reading from that cannot be in good faith, because you have heard this witness say that he was not there and didn't hear any part of it. How could he possibly know whether Mr. Evans said that or not?

Mr. Jacobs: Because he just got through testifying——

The Referee (interrupting): Read the question pending, Mr. Blume.

(Question read by the reporter, as follows:

"Here and there. Now, among the places that were 'here,' let me ask you if he discussed the following"——)

The Referee: Why not just ask the witness whether or not he heard Mr. Evans discuss a following proposition, whatever it may have been?

Mr. Jacobs: I thought that was what I was asking him.

[fol. 1830] The Referee: I take it these interrogations are primarily in the nature of preliminary questions.

Mr. Hogsett: That is the trouble. It is all preliminary and doesn't lead to anything.

The Referee: Well, I can hardly assume that a question is not asked on good faith, on either side.

Mr. Hogsett: Here is a sample of it here, that he has asked in the same way. The witness specifically says, "I don't know; I tell you I was not there; I did not hear him say that."

Mr. Jacobs: The only way I can find out is by asking him.

The Referee: Of course, it might be at least—there is absolutely no evidenciary value whatever to a matter that goes into this record merely by being read into it as a part of the question when the witness on the stand knows nothing whatever about the topic under consideration. Counsel

necessarily must have a large latitude in determining the form of question to be asked. It seems to me that it might be entirely possible to ask the witness in direct terms, did you or not hear such a man discuss a given question at such a time and such a place.

Mr. Folonie: Irrespective of the source from which it came to that person.

The Referee: The source is of no possible value except insofar as it might tend to furnish the means of identification.

Mr. Hogsett: Suppose, without desiring to argue it, suppose it were true he heard this witness say it, what if——

[fol. 1831] Mr. Barker: Then he, being the president, will be asked if he endorses it.

Mr. Hogsett: Well, take some Greek History and read him some things out of that and ask him if he endorses those.

The Referee: Unless these questions serve some useful purpose as preliminary to some matter which is pertinent to the issues here involved, then it seems to me that the time is being used to little purpose.

Mr. Hogsett: That is my theory of it; wasting a lot of it.

The Referee: It seems to me, however, that a direct and simple question could easily be put to determine whether or not this witness knows about a given transaction. I assume of course that counsel expects to connect some preliminary matters with other matters that are pertinent. Reframe your question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs: Read the question.

(Question read by the reporter, as follows:

"Here and there. Now, among the places that were 'here,' let me ask you if he discussed the following"——)

Mr. Jacobs: I will reframe that.

Q. If he discussed the following matter, about which I shall ask you, namely that the "American Eagle Fire In-
[fol. 1832] surance Company acquired $175,000 worth of the Cuba Cane Sugar Company's preferred stock, for which it paid $169,700."

Mr. Folonie: We object, if the court please, because he asked him in substance that identical question before.

Mr. Jacobs: No, that was in reference to a purchase by the Continental.

Mr. Folonie: About this one, too.

The Referee: Well, answer the question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. (Continuing reading:) "and that this stock was sold at a loss of $41,939"?

A. No, sir.

Q. Did you ever—did he ever say in these discussions with you, Mr. Robertson, that the common stock bonus which he personally and individually retained as a member—a member of this underwriting syndicate—was sold by him at a profit of $19,872.40?

Mr. Folonie: We object to that statement of counsel as to common stock which he retained, because nobody ever said he did such a thing.

The Referee: The only question here is whether or not Mr. Evans stated to this witness that these things had been done.

A. No.

Mr. Jacobs:

Q. Now, did he state to you in these dining hall conversations that the Fidelity Phœnix, of which he was an officer [fol. 1833] or a director, acquired $445,000 worth of the same stock, Cuba Cane Sugar Company stock, and paid for it the sum of $410,933, and that this stock was subsequently sold at a loss of $66,190?

Mr. Folonie: Object to the form of the question, purporting to incorporate a lot of figures when the witness has not said the subject matter was discussed at all and is desired for ulterior and improper purposes.

The Referee: Well, the simple inquiry here is whether or not Mr. Evans made that statement to the witness. The witness may answer.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. No.

Mr. Jacobs:

Q. Do you know whether, as a matter of fact, the American Eagle Fire Insurance Company did buy Cuba Cane stock?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Don't you keep a pretty close survey of the activities of your company in your mind, Mr. Robertson?

Mr. Folonie: We object to assuming the American Eagle is his company.

Mr. Jacobs: He said he was a director of it.

The Referee: He said he was a director.

A. I keep in primary touch with the underwriting activities of the Continental and as to the financial activities of both the Continental and Fidelity Phœnix I know very little.

Mr. Jacobs:

Q. Have you got a connection with the Fidelity Phœnix too?

A. No, sir.

[fol. 1834] Q. I asked you about the American Eagle, and you just said the Fidelity Phœnix. You have no connection with the Fidelity Phœnix at all?

A. No, sir.

Q. But you have with the American Eagle?

A. Yes, sir.

Q. That is the one I asked you about. You simply made a mistake. Well, you are president of the Continental, aren't you?

A. Yes, sir.

Q. Don't you, as president of that company, know anything about the company excepting merely the underwriting work?

A. Well, that is the main job. I know very little about the financial end, as I have said.

Q. You say that the underwriting is the main job?

A. Yes, sir.

Q. And the Continental has got 40 million dollars worth or more of assets for investment. Don't you think that is pretty much the main part of your job, as president of this company, to know something about that?

A. No, sir.

Q. You don't think so?

A. No, sir.

Q. And you don't know very much, you say, about that end of it?

A. No, sir.

Q. You don't know what you have been investing in, except in a most cursory way?

A. That is right.

Q. Know very little about the gains or losses upon those investments?

A. Comparatively little.

Q. Don't know very much about the expense of those investments except as they are furnished to you by somebody else?

A. No, sir.

Q. Who is charged with the duty of the general supervision of this company, you as president?

[fol. 1835] A. The general supervision is in Mr. Evans, chairman of the board.

Q. Mr. Evans as chairman of the board has general supervision. Hasn't the president got anything to do with anything much except just the underwriting end of the business?

A. That is the division of authority. My end is the general management of the underwriting activities of the company.

Q. Is there a unique division of duties in the insurance world whereby the president hasn't anything to do with a large part of the business of the insurance company?

A. I can't testify as to other companies. As to the Continental, there is a distinct, and, if you please, unique division.

Q. Mr. Evans is at home and has not been doing anything for ten or eleven months, has he?

Mr. Leahy: He answered that.

Mr. Jacobs:

Q. He isn't looking after it, is he?

A. No. The treasurer of the company——

Q. (Interrupting.) Is he——

A. (Continuing:) The treasurer is charged primarily with supervising investments, in connection with the finance committee, whose names I gave you.

Q. The treasurer of the company is the man who looks after the vast end of your company's business, namely investments, to the exclusion of the president of the company. Is that what I understand you to say?

A. Practically, yes, sir.

Q. Who is your treasurer?

A. Mr. Ernest Stern.

Q. How long has he been your treasurer?

A. Several years. I don't remember exactly.

[fol. 1836] Q. As much as five or six or seven years?

A. Why, he had the title of—has had the title of secretary and performed practically the same duties; about three years ago he was given the title of treasurer—which didn't mean anything except a little additional distinction.

Q. Now, these syndicates, stock syndicates, when a bankers' syndicate takes over an issue of stock it takes it over at a definite figure, doesn't it?

A. That is my understanding.

Q. And then the selling syndicate takes it over at a figure from the bankers' syndicate, doesn't it?

A. I don't know the details. I just know the general plan.

Q. Well, now, if as part of the same transaction the selling syndicate takes over the stock from the bankers' syndicate at a definite figure, the bankers' syndicate assumes no risk in the matter but simply takes the profit as between it and the selling syndicate, doesn't it?

Mr. Folonie: Object to it as entirely speculative, outside of this witness' experience, and immaterial in any aspect of this case.

Mr. Jacobs: I am trying to find out how the funds of this company were handled by its officers.

The Referee: I think the question simply calls for a conclusion from facts stated that anybody is competent to draw.

Mr. Jacobs: I am asking him how these syndicates work.

Mr. Leahy: He said he didn't know.

The Referee: Better reframe the question.

[fol. 1837] (To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Let me ask you this, if the method of New York Insurance companies is not that an underwriting bankers' syndicate takes over an issue at, say, fifty million dollars, as was done—Mr. Robertson, is this the way these New York syndicates—underwriting syndicates—operate, a bankers' syndicate takes over the stock issue of some company at a definite figure, say fifty million dollars, as transpired in one specific instance, and then the selling syndicate takes over from the bankers' syndicate at an advanced figure the same stock and then sells it?

Mr. Folonie: We object to that as immaterial.

Mr. Jacobs:

Q. Now, is that the method that is used?

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't know, sir.

Mr. Jacobs:

Q. Never heard of that. You don't know how that is handled?

A. No, sir.

Q. You haven't informed yourself of that?

A. No.

Mr. Hogsett: Now, he says he doesn't know. Ought that not to answer it?

Mr. Leahy: Ought to.

Mr. Jacobs:

Q. Did you ever learn whether Mr. Evans in selling to the Continental certain stock issues—I think I asked you [fol. 1838] this morning, but I am not sure whether I did or not—in those discussions, did he say anything about certain stocks that he sold as an underwriter to the Continental company of the Pierce Arrow Motor Company, did he say anything about that?

A. No, sir.

Q. Did he say anything about any stocks that he may have sold of the Goodyear Tire & Rubber Company to the Continental as an underwriter?

A. No, sir.

Q. And didn't tell you any of his experiences or any of the details concerning any particular transactions of that character?

A. No, sir.

Q. Now, the Continental Company had net premiums written from 1918 to 1922 inclusive of $82,912,816.68, didn't it?

A. I haven't checked the figures. I assume that is about right.

Mr. Folonie: What is that figure?

Mr. Jacobs: $82,912,000 plus.

Mr. Folonie: That is approximately right for that period.

Mr. Jacobs:

Q. Now, I want to know if it is not a fact that your reports to the State of Missouri show an increase in unearned premiums over that period of $6,507,597.05?

Mr. Folonie: Charges, you mean?

Mr. Jacobs: No, if his reports to Missouri don't show that is a fact. I am talking about total business.

A. I don't know, sir, exactly. I would have to make the calculation. You want the increase in the unearned premium?

[fol. 1839] Mr. Folonie: Starting with January 1, 1918.

A. There seems to be an error in these figures here.

Mr. Folonie: January.

A. It seems to be $8,419,022—it must have been 18 million. With that correction I can give it to you.

Mr. Folonie: It is $18,135,000 in this book that I have here.

The Witness: Yes, that is right. This "1" is left off here on this book. (Witness makes calculation.) That appears to show an increase of $5,023,103.

Mr. Jacobs:

Q. Take 1917—December 31st; or January 1, 1918.

A. I have taken them.

Mr. Folonie: $13,815,000 from 22—no.

A. I have $13,112,441. $18,135,544, and it shows that there was an increase there of $5,023,103.

Mr. Hyde: Well, we figured it from the annual statement, but ours shows six. But it illustrates the principle.

Mr. Folonie: Move to strike out the statement of the defendant as self-serving.

The Referee: Sustained.

Mr. Folonie: I want to be sure the record showed he was here. That is the only way I could get it in.

Mr. Jacobs: We will admit he is here, if you want to get that in the record.

Q. Now, that would make your net earned premiums the difference between those two sums, the net premiums written and your increase in unearned premiumsums, wouldn't it?

A. Well, we deduct unearned premium reserve.

[fol. 1840] Q. You would deduct the increase from the net premiums written, wouldn't you—to get the net earned premiums?

A. To get that I would take the reserve and the surplus and deduct those from the gross premiums; and get the earned premiums.

Q. That is not the way you usually—you have testified to as the usual method of calculation. Now, a deduction of the increase in your unearned premiums from your net premiums written gives you net earned premiums, doesn't it?

A. Yes, sir.

Q. Well, that is right. That would be something like 77 million on your figures, wouldn't it?

A. 77 million? I think not.

Q. Over the period. You had net premiums written of $82,912,816.

A. Over the period, I presume that is correct.

Q. That is what I am talking about. Now, your net loss paid for that period, $37,025,246.78.

Mr. Folonie: How much?

Mr. Jacobs: 37 million plus.

Q. Wasn't it—net losses paid?

A. I haven't figured it. I presume that your figures are right. I don't know.

Q. Now, on your method—can you tell from your book there what your increase in incurred losses was for that period?

Mr. Folonie: We object to using the term "increase in incurred losses," as indicating it is a continuing figure. It is a distinct figure for each term and misleading as so used. [fol. 1841] Mr. Jacobs: Go ahead, Mr. Robertson, if you can tell from the book.

A. The increase in losses incurred appears to be something like four million dollars; little bit less than four million dollars.

Mr. Folonie: Say that again. I think you got it wrong. During 1918 and 1922, now?

Mr. Jacobs: Yes.

Mr. Folonie: What increase have you got there?

The Witness: For 1918 I have $5,096,365. And then there is——

Mr. Folonie (interrupting): Losses paid or losses incurred?

The Witness: Losses incurred.

Mr. Folonie: It is $6,915,000 in this book.

The Witness: You mean 1921. Then I take that from $9,319,597.

Mr. Folonie: That will give you—both figures are different.

The Witness: There is a slight variation. I don't know where it comes in. The difference in losses appears to be here $4,423,000.

Mr. Jacobs:

Q. Isn't the increase in your incurred losses for this period '18 to '22, inclusive, $1,119,323.61?

Mr. Hogsett: Haven't you got these things already in evidence?

Mr. Jacobs: No, sir.

Mr. Folonie: He has answered. He says no, sir.

Mr. Jacobs:

Q. That is not correct?

[fol. 1842] Mr. Hyde: Take December 31st, '17, and December 31st, '22, that will give you the increase if your books are right.

The Witness: I have that here and I have made the deduction. It shows an increase in losses of $4,223,254.

Mr. Hyde: Incurred losses?

The Witness: Yes, sir.

Mr. Jacobs:

Q. Is that your increase in incurred losses between those two dates?

A. Within, yes, sir.

Q. You call it 4 million?

A. $4,223,254.

Q. Well, what is that increase between those two dates in our unpaid losses?

A. I can't tell you. I haven't the information.

Mr. Folonie: When you put a witness on the stand will you lend me that book so I can cross examine, when you put a witness on?

Mr. Jacobs: This book here?

Mr. Folonie: Apparently first aid to a cross examiner.

Mr. Jacobs: I can't lend you this particular book.

Mr. Hogsett: Take a pamphlet on what constitutes an underwriting profit and ask his witness whether or not he hasn't heard somebody say that.

Mr. Folonie: That's a good idea.

Mr. Jacobs: What is this, a reflection on my cross examination or what?

Mr. Folonie: No, admiration.

Mr. Jacobs: I don't know what called forth these remarks. I am waiting for this witness to tell me.

The Referee: I don't think this need go in the record. [fol. 1843] Mr. Folonie: I don't think the reporter can take it, we are all talking at once.

Mr. Jacobs:

Q. Did you get that figure I asked you?

A. Re-state the question, please.

Q. What is your increase in your outstanding unpaid losses between those two dates, or what would be characterized, perhaps, as your incurred loss reserve?

Mr. Folonie: Now you are talking about something entirely different. If the court please, we object to confusing two such entirely distinct things.

Mr. Jacobs: Nothing different about it.

Mr. Folonie: The amount of the unpaid losses each period, if you can figure it, Mr. Robertson.

The Witness: All right.

Mr. Jacobs:

Q. No, I didn't ask you for that, Mr. Robertson. I am examining you.

A. All right.

Q. I asked you for the increase at the end of this period, if any.

A. I don't know, sir.

Q. You don't know?

A. No, sir.

Q. Your book would show, that you have got there?

A. I don't appear to have figures whereby I can calculate that.

Q. We have $38,144,570.39.

The Referee: At what time?

Mr. Jacobs: For this period; at the end of the period.

Mr. Folonie: How many years, taking in now? Five once and six at another time?

Mr. Jacobs: Not at any time have I taken six. I am talking about 1918 to '22, inclusive. That is the only period I have talked about.

[fol. 1844] Mr. Folonie: We will object to taking into account that period, which does not correspond with the period here under inquiry, and therefore misleading; and we are afraid the court will be misled by the answer, if given.

The Referee: The exact period covered by the five years here involved is what?

Mr. Leahy: 1917 to 1921.

The Referee: That is what I thought. This relates to one year different?

Mr. Jacobs: Yes.

The Referee: Answer the question, if you can.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time by counsel duly excepted, and still except.)

A. (Witness calculates.) I don't appear to have that information.

Mr. Jacobs:

Q. Mr. Robertson, it has been testified here that losses are paid as an average on about 75 cents and 90 cents on the dollar—75 to 90 cents on the dollar. Is that correct?

Mr. Folonie: We object to assuming that this company does not pay its losses in full.

Mr. Jacobs: I am not assuming they were, but I asked a question that this witness can answer.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted, and still except.)

[fol. 1845] Mr. Hogsett: Is it proper or not to say to this witness what some other witness has said?

Mr. Jacobs: I am asking him if that was a correct statement.

Mr. Leahy: Your Honor, that presupposes there is some doubt in the gentleman's mind as to the correctness of some testimony heretofore given.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: Did you refer to the adjusted figure of a loss? I should say it is not correct. If you refer to the claims that are made for payment, it may be correct. I am not prepared to say.

Mr. Jacobs:

Q. I am asking you with reference to those estimates which you receive through your agencies and which go on your books and make up your incurred losses. Is it a fair statement, the percentage I gave you, that those losses are actually paid on, say from 75 to 90 cents on the dollar?

A. That is approximately right, sir.

Q. Now, if that is correct, Mr. Robertson, over a five year period, at we will say 10 per cent instead of 25 per cent, as we might on a basis of 75 to 90—but we will just use the higher figure and say the basis of 10 per cent—should not there be in figuring the experience of a definite period of time, a reduction of 10 per cent in the increase of incurred losses in order to arrive at the proper experience of the companies for that period?

A. No, sir.

[fol. 1846] Q. You don't think so?

A. I don't.

Q. Although it goes over a definite period and not over an indefinite period?

A. I still think that that would not apply.

Q. You don't think that ought to be done?

A. I don't think it is right.

Q. That those losses as they appear on the books should be figured each year over the five year period without the reduction of, say, the 10 per cent, which is——

A. (Interrupting.) Will you allow me to illustrate by telling you just exactly what is done by the companies?

Q. Go ahead.

A. These losses are reported all through the year from the 1st of January to the 31st of December inclusive; and at first they are entered as estimates, incurred losses; and they are paid. Then they cease to be incurred losses. They are paid losses. And when you get down to December, why, you have got to—incurred losses are mostly losses that have been paid.

Q. Some have been paid and some are still incurred?

A. Most of them have been paid by that time; the large majority. Then we have in the month of December, which is the last month, which is an estimate, and has to go in the company's statement as an estimate. A number of claims are still outstanding. Those claims are carefully estimated and if there are any possible reductions, why, those reductions are taken advantage of because we naturally want to make as accurate a statement as we can because we have to swear to it.

[fol. 1847] The Referee:

Q. Now, Mr. Robertson, if I understand the situation there, during the latter part of this five year period, for example—and by that I mean during the latter part of the last year of the five year period—you did have upon the books of the company certain unpaid losses?

A. Yes, Your Honor.

Q. Now, in determining the exact status of the loss account during that five year period there was an estimate as to that portion remaining unpaid the latter part of the fifth year?

A. That is correct.

Q. Now, then, what I would like to know is how closely do you approximate the actual amount paid on those losses

when that amount is later ascertained? Perhaps, to make my meaning a little clearer, is this what I have in mind: Suppose you estimate that during the twelfth month of the fifth year you had outstanding losses of $250,000, accrued.

A. Yes, sir.

Q. And unpaid.

A. Yes, sir.

Q. Now, later, in the next year, we will say, all of those losses are adjusted. You then know exactly how much you have paid on what previously was an estimated or unpaid loss.

A. That is correct, sir.

Q. Now, about what is the percentage or difference or relative difference between the estimates of the unpaid losses which you carried on your books as an accrued loss account in the twelfth month of the fifth year, as compared with the amount actually paid on those estimated losses?

A. The very small fraction of one per cent, and it may vary one way or the other. It may be too high or too low.

[fol. 1848] Mr. Jacobs:

Q. Now, did you testify a while ago that from 10 to 25 per cent would be a fair estimate—or that 75 to 90 cents a dollar would be fair estimate of what would be paid in actual payment of losses, upon your estimated losses that appear on your books?

A. That is a fair estimate of payments made under reported losses. That is salvages made in one way or the other would probably run to 15 per cent.

Q. Now, you have it—what is an incurred loss reserve?

A. Well, we set up a liability for unpaid losses.

Q. Does that represent an incurred loss reserve?

A. We don't call it that.

Q. Well, it in effect represents that, doesn't it?

A. We call it a reserve for losses.

Q. Now, at the end of each year you make an annual statement to Missouri covering a year's period at a time, don't you?

A. Yes, sir.

Q. And you carry over this liability, which is the incurred loss reserve or reserve for payment of outstanding losses, don't you? That appears, doesn't it?

A. Oh, yes.

Q. Now, isn't it a fact that those losses as represented by that liability are settled on the basis of from 75 to 90 cents on the dollar?

A. No, sir,

Q. Didn't you say so a while ago?

A. I tried to explain so that my meaning would be entirely clear. I say that losses, as reported, will probably yield a salvage of as much as 15 per cent. But that when the end of the year comes—that we discount those salvages; if you please, so that the figures we put in are as near accurate as it is humanly possible to get them.

[fol. 1849] Q. Aside from salvage, aren't your estimated losses as they come in from 10 to 25 per cent higher than they actually are when they are paid?

A. There seems to be a confussion of terms. I don't get exactly your meaning.

Mr. Folonie: He understands the term "salvage" to mean perhaps, what you take over as physical salvage.

A. I was afraid there was some misunderstanding there.

Mr. Jacobs:

Q. The last question I asked you—read that, please, Mr. Blume.

(Question read by the reporter.)

A. Our estimates very closely approximate; sometimes even exceed what the losses are when they are actually paid.

Q. Well, don't they usually exceed them?

A. I have made the statement. I can't explain it any more.

Q. Do they exceed them as much as 10 or 15 per cent?

A. I don't know.

Q. Well, if they do, shouldn't there then be a reduction to that extent of that incurred loss, increase, at the end of the year, in order to arrive at your true experience?

A. No, sir. Our losses are put in at as near the actual figure as it is possible to put them in, and there is no reduction that can be given. We are looking for that reduction as much as anybody. We would be glad to see it; usually we can't find it.

[fol. 1850] Q. You get your estimates through your agents, don't you?

A. Yes, sir. They are—I should say their preliminary estimate comes in from the agent in the shape of notice of loss.

Q. He either gets it on his own calculation or the claim of the assured, doesn't he?

A. Well, he gets it in various ways. He may get it in those ways or in other ways.

Q. Well, now, you wouldn't want to be in a position where your estimated losses would be less than your losses actually paid, would you?

A. No, sir.

Q. Don't you try to err on the side of safety and have your estimated losses exceed, for the sake of safety, the losses you actually pay?

A. My dear sir, as I have tried to make very plain, we carry these losses along at a fairly full figure until the end of the year and then in order to make a true statement of our affairs we estimate it just as accurately as we can by even sending out letters to adjusters and to agents as to whether or not this claim has been withdrawn, or that claim, so that what we actually get is as near as possible as you can get to a correct figure.

Q. Do you think that at the end of a definite year like 1921, for example, that there is no salvage in your incurred losses reserve that year carried over—that increase—unpaid losses, or that increase?

Mr. Folonie: Unpaid losses.

Mr. Barker:

Q. (Continuing:) —or that increase in the incurred loss?

A. Yes, I think there is no salvage in that. If we thought there was salvage in that we would take it in that statement.

[fol. 1851] Q. Do you think the figure that you carry over will be paid dollar for dollar?

A. Yes, sir, absolutely.

Q. And that there is no increase there whatever?

A. No increase to be made.

Q. And you think your reports will actually show that?

A. They might not show it to the dollar.

Q. But substantially?
A. Yes, sir, I do; yes, sir.

The Referee: May I ask a question there?
Mr. Barker: Go ahead, that's all right.

The Referee:

Q. You think an outstanding unpaid loss can at all seasons of the year—you have an outstanding unpaid loss account at all seasons of the year, as I understand it?
A. Yes, sir.
Q. Now, do I understand you to say that towards the close of the year at the time when you make the estimate of the acquired outstanding unpaid losses, you make a more conservative estimate of that amount than you do at the earlier portion of the year?
A. Yes, sir. That is cut down as the result of such information as we can get, which tends to reduce the amount we will have to pay on these various claims.
Q. Information which you do not attempt to obtain in the earlier seasons of the year?
A. Yes, sir.

The Referee: That is all.
Mr. Leahy: But there is a very small percentage kept over, is there not?

Mr. Jacobs:

Q. Now, Mr. Robertson, if there is an increase in unearned premiums of any sum of money, suppose it is five million, as you suggested, five million plus, a little while ago—that—at the end of the year do you think that the ex-[fol. 1852] pense upon that business should be carried in the year's as a charge—the full expense, as a charge against that year's business?
A. There is only one way to figure expense, and that is on the premiums written for the year under consideration, which is a thing that is not a matter of choice with us. It has been laid down and we have got to follow the——
Q. (Interrupting.) You are talking about it being laid down.
A. Yes.
Q. Do you mean in these reports?

A. No, sir. I mean by the laws of the various states and by the insurance authorities. You have to follow blindly for each state.

Q. These blanks are the blanks that were gotten up in the year following this document which suggested that method of calculation by the national board of fire underwriters in 1920, isn't it—those are the blanks you are talking about, isn't it?

A. Yes, sir.

Mr. Folonie: Underwriting experience by classes blanks, is that what you are talking about?

A. I had in mind the blanks were prepared in our statements.

Mr. Jacobs:

Q. Now, Mr. Robertson, this method of figuring which you have and by which you reach your earned premium basis, which I understand furnishes the basis called your calculations—you have on an ascending scale of business at the end of the period a sum of five million dollars or thereabouts, representing the increase in unearned premiums—or the increase in unearnd premiums—you understand that is the way it is handled, don't you?

A. Yes.

[fol. 1853] Q. Now, that five million dollars is not credited in the income for the purpose of calculation of that year, is it?

A. I don't know what you mean exactly.

Q. Well, in other words, it is deducted from the written premiums for the year?

A. Well, if you want to get the earned premiums you would deduct the unearned from the written premiums for the year?

A. Well, if you want to get the earned premiums you would deduct the unearned from written.

Q. And you do deduct this five million dollars, if that is the amount of your increase in unearned premiums, due to an ascending scale of business?

A. We deduct whatever the unearned is.

Q. Well, take for example this five million dollars.

A. If the unearned premiums increase five million, we deduct five million.

Q. That is what I say—Taken out of that book of yours; I have $6,500,000 here, but I am taking your figures. Now, you, however, have charged in your expense account all the expenses of doing the entire amount of premiums written—I mean the entire amount of premium written for the year, haven't you?

A. Yes, sir.

Q. Now, your expense ratio is about what?

A. Expense ratio is 40.2 for the year 1922.

Q. Well, 40 per cent.

A. 40 per cent in round numbers, yes.

Q. Now, don't you think that in order to arrive at a fair result for the year, or the firm's experience, that there should be deducted from the expenses of the company 40 per cent of that increase in unearned premiums, or 40 per cent of the five million dollars, if that is the figure?

A. No, sir.

[fol. 1854] Q. You don't think that?

A. No, sir.

Q. You think that all that expense should go in there?

A. It must go in.

Q. And it should, I mean, as a proper method of calculation?

A. Yes, sir.

Q. Although you have deducted that amount from your income of the year?

A. Yes, sir.

Mr. Jacobs: That is all.

Redirect examination by Mr. Folonie:

Q. I am in hopes this may be of enlightenment to the court. Have you the figures there of your incurred losses and your paid losses for the year 1922?

A. Yes, sir.

Q. What were your losses incurred that year?

Mr. Jacobs: What year?

Mr. Folonie: 1922.

A. Losses incurred were $9,057,000 plus.

Q. What were your paid losses that year?

A. Our paid losses that year were $9,430,616.

Q. Now, go to the year—roughly four hundred thousand more incurred than paid that year?

A. Yes.

Q. 1921?

A. Losses incurred, $9,319,597.

Q. Losses paid that year?

A. $9,442,468.

Q. And for the year, 1920 what were your losses incurred?

A. $11,915,979.

Q. What were your losses paid that year?

A. $7,587,067.

Q. Losses paid that year were some $400,000 less than the incurred?

A. Yes, sir.

[fol. 1855] Q. The year before that, 1919, what were your losses incurred?

A. Losses incurred in 1919 were $5,835,680.

Q. What were losses for paid for the same year?

A. $5,715,883.

Q. Your incurred figure about $100,000 more than you paid that year?

A. Yes, sir.

Q. And so they go, up and down, for different years depending upon how much of an unpaid figure you have at the end of the year?

A. Yes, sir; depends pretty largely on whether or not our losses are light or heavy in the two last months of the year.

Q. Counsel has asked you about using earned premium basis since this "What constitutes a reasonable underwriting profit" pamphlet came out. Did you start using an earned premium basis along about that time, 1921, or did you have it before that?

A. Why, we have had that as long as I have know anything about the business. I have never known of any other method.

Q. How long have you been in the business?

A. Twenty-five years.

Q. That was even before we started your examination here?

A. Yes, sir.

Mr. Folonie: That is all.

Recross-examination by Mr. Jacobs:

Q. You haven't been making reports to the State of Missouri on that basis for twenty-five years, have you?

A. I don't know, sir.

Q. It doesn't make any difference whether there is a raise or fall or what the difference may be one way or the [fol. 1856] other in those incurred and paid losses from month to month or year to year, the real facts are developed in figuring the period of five years and the situation at the beginning and at the end of the five years, isn't it?

A. The five year period is the period that we invariably take to show a profit or loss or to test our operations.

Q. And the net situation of the five year period with reference to its beginning and ending would show you the true relation between your paid losses and your incurred losses, would it?

A. Yes, sir.

Mr. Jacobs: That is all.

Mr. Folonie: That is all.

(Witness excused.)

Mr. Folonie: Let the record show that the plaintiffs produced Mr. Jameson of the Globe Rutgers, pursuant to request made for his appearance.

E. C. Jameson, recalled as a witness on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Direct examination by Mr. Jacobs:

Q. Mr. Jameson, what is the loss ratio of your company?

Mr. Folonie: We object to it on the ground it is reiteration of what he has already testified to in detail.

The Referee: I think that was already covered.

Mr. Jacobs: Well, I am merely asking it as a preliminary question.

[fol. 1857] Mr. Leahy: Well, it is in the record. So proceed with it.

Mr. Jacobs:

Q. Is it about 65 per cent?

A. The record in Missouri, or the general loss record?

Q. The general loss record.

A. Well, you mean for an average of ten years or one month or one year?

Q. Say from '18 to '22, inclusive, both years.

A. From '18 to '22?

Q. Yes.

A. Well, I would have to look up the report to see what it is. It is right there in the book. Shall I take it (referring to book)?

Mr. Folonie: If it is of any service to you.

The Witness: These ratios haven't any reference to increase in reserves, you know. In other words, these loss ratios—if I quote these—are on the premiums written and not the premiums earned.

Mr. Jacobs:

Q. The loss ratio?

A. The true loss ratio, of course, is on the premiums earned.

Q. What have you them down on the premiums written for then?

Mr. Folonie: He hasn't got them down. That is a book on it.

Mr. Jacobs:

Q. What is that book you have?

A. This is "standard fire insurance tables."

Q. Who gets that out?

A. Standard Publishing Company of Boston.

Q. Do you use that in your business?

A. Oh, no, we don't use it.

Q. Well, I see Mr. Folonie handed it to you. Is it a manual that carries an annual compilation of your company, among others?

A. Yes.

[fol. 1858] Q. And is it kind of a standard work among insurance companies?

A. Yes.

Q. And you say the figures you have there——

A. (interrupting.) I presume they are taken from the reports.

Q. And which these figures are based upon—the loss ratio based upon premiums written?

A. Yes.

Q. What is your loss ratio according to the little manual you have there?

A. Well, 1919, it is 53.

Q. 1920?

A. 62. I will let the fractions go. 1921, 65. 1922, 66.

Q. What was it in '18?

A. In '18 it was 46.

Q. What is your expense ratio?

A. The expense ratio is, in '18, 24; '19, is 29; '20, is 24; '21, is 26.

Q. How are you counting that? You started with '18.

Mr. Leahy: 1918.

A. '18, '19 and '20.

Mr. Jacobs:

Q. What is '18?

A. '18 is 24.

Q. What is '19?

A. 29.

Q. What is '20?

A. '20 is 24.

Q. What is '21?

A. '21 is 26.

Q. What is the next year?

A. '22, and that is 32.

The Referee: What basis is used there, Mr. Jameson?

A. That is the expense ratio on the premiums written; expenses—actual expense on premiums written.

Mr. Jacobs:

Q. You get that out of that same manual?

A. Yes.

[fol. 1859] Q. Now, is it a fact that your net premiums written for the period '18 to '22, inclusive, were $111,345,-357.83?

A. How much?

Q. $111,000,000?

A. Gives more than that here.

Q. What have you got?

A. I have got—no, it isn't either; about $111,000,000, yes.

Q. $111,000,000 plus—400—odd thousand?

A. Yes.

Q. Now, were your increases in unearned premiums for that five years $9,790,813.85?

Mr. Folonie: What is that figure?

A. About five million and a half here.

Mr. Jacobs:

Q. Your increase in unearned premiums at the end of '22?

A. Yes.

Q. How do you get them?

A. Well, it was $8,824,000 in 1918.

Q. You have got to have your figures that stand at the beginning of '18?

A. From the beginning of '18 you wanted, until the end of '19?

Q. The beginning of '18 to the end of '22, you get your figures—wouldn't it be, for that period, the difference?

The Referee: End of the year?

A. I guess that is right.

Mr. Jacobs:

Q. Then how much of that amount—how much does that amount to?

A. To about to $6,900,000.

Q. Now, that $6,900,000—we will call it seven million for the sake of round numbers. That represents the increase in your unearned premiums over that period of years, doesn't it?

A. Yes, sir.

[fol. 1860] Q. That means that you did an ascending scale of business to that extent for that period, doesn't it?

A. Yes.

Q. Now, in making your reports, you deduct that amount of money from your premiums written—net premiums written, don't you?

A. In making the report out we do, yes.

Mr. Folonie: Pardon me, but Mr. Street has come in. How long do you propose to be with this witness?

Mr. Jacobs: Not very long.

Mr. Folonie: I didn't want to keep him sitting here uselessly.

Mr. Jacobs:

Q. That is deducted from your premiums written and leaves a balance, whatever the balance is, as between them? At any rate, that amount of money, that represents your increased unearned premiums, is deducted from your net premiums written, isn't it?

A. Yes.

Q. In other words, for that five year period the increase of unearned premiums is not figured in the income for the period, is it?

A. Included in the income but it is not figured in the profits.

Q. Well, you deduct it from your premiums written, don't you, in making your calculations and in making your reports, too? Premiums written, minus the 7 million dollars—if it is 7 million?

A. Well, we don't deduct it in any sense from the—don't deduct it anywhere unless you are figuring your profits.

Q. Well, in making your reports you deduct it, don't you, to the State of Missouri?

A. No, we don't except showing the profits. That is all. [fol. 1861] Q. Well, leave it that way, then. You do deduct it and it does not appear as part of your income in figuring your profits—that seven million dollars?

A. It appears as a part of our income, certainly.

Q. I say, you deduct it in figuring your profits in your statement, don't you?

Mr. Folonie: Wouldn't deduct a five year difference in computing a one year annual statement.

A. Figuring the net profits on our operations for the five years we deduct it, yes.

Mr. Jacobs:

Q. Well, then, you deduct it. It does not appear in the income for that period, then?

A. Yes.

Q. For the purpose of figuring profits, I mean. It appears in the gross income, because it appears in the premiums written?

A. Yes.

Q. But when you come to figure the profits you deduct that increased unearned premium amount, don't you?

A. When you figure profits you deduct it, certainly.

Q. And that means that seven million dollars does not appear, then, in the income for the purpose of figuring profits?

A. In the profit computation, I say, yes—confined to the profits computation.

Q. Now, all your expenses are charged up in those——

The Referee (interrupting): Pardon me. Mr. Jameson, I don't clearly grasp your meaning. Do you mean that sum does not appear when you are figuring the profits for that period?

A. It only appears in this way: that the gross income is set on one side and then on the other side you charge out all [fol. 1862] the liabilities and expenses, leaving the net profit. That is, when you come to figure the net profit. Just as in figuring the operations of the company, why, of course it does not appear in any way. The premiums are—your whole premiums are included in your income——

The Referee: But in figuring the profits for this period of years, does this sum that is referred to as seven million dollars, I believe, enter into that calculation as one of the factors in determining the profits for that period?

A. Yes.

Mr. Jacobs:

Q. How long?

A. Well, each year has its figure and the aggregate would be this amount.

Q. Why, Mr. Jameson, you have stated, and you know it to be a fact, don't you, that when you come to figure profit you deduct from your premiums written your increased unearned premiums, namely, roughly speaking, seven million dollars, for the period, don't you?

A. That is what I said.

Q. So it does not appear in the income for the purpose of figuring profit, does it?

A. It is first put on one side and then deducted on the other.

Q. You report your premiums written, don't you?

A. Yes.

Q. That would include that seven million dollars?

A. Yes.

Q. But when you go to figure profit you take out the seven million dollars from your premiums?

A. Yes.

[fol. 1863] Q. So as far as your profit calculations are concerned, your seven million dollars is out of it, isn't it?

A. It is deducted, yes.

Q. And therefore it is not profit—it is not part of your income for the purpose of figuring profit, is it—because you have deducted it, haven't you?

A. Well, that is too technical for me. I am not enough of a bookkeeper to say. It is very easy to see how it is figured, because the reports are all on file in the insurance department.

Q. Your total expenses are charged up, aren't they?

A. Yes.

Q. Your expense ratio for these particular five years is about 27 per cent, isn't it?

A. Yes.

Q. Now, 27 per cent of that seven million dollars is $1,850,000?

A. I think I will have to give you an explanation on that if you will permit. You say our expenses are all in there. I think those reports—expenses are put in on the cash

basis, that is the premiums that have been paid. I am not sure about that. But it shows in the reports.

Q. However, that may be, every dollar's worth of expenses that you paid out are in your account?

A. Yes.

Q. You don't pull any of them out and carry them over, do you? You put them all in and charge them, that you pay, don't you?

A. Yes.

Q. Now, 27 per cent of that seven million dollars is $1,890,000, isn't it?

A. Well, if we have figured it correctly.

[fol. 1864] Q. Well, I think that is right.

A. It looks to be about right.

Q. Now, that $1,890,000 should be deducted from the total expenses you have charged during that five year period, shouldn't it? To arrive at a proper experience in the matter of profits?

A. How could you do that?

Q. Well, how can you take out seven million dollars that you took in, when you figure profit.

A. Well, that, each year, year by year, the expenses are paid.

Q. Certainly they are paid, and you likewise get the seven million dollars, don't you?

A. You get the seven million dollars, minus the expenses.

Q. Why the expenses? You have charged every dollar of expenses in there. If you say that the seven million minus the expense should be taken out—do you say that is what should be done?

A. I don't say that it should be done. These reports are made in accordance with the legal requirement.

Q. What do you say, though, as a business man and as an insurance man, Mr. Jameson, irrespective of the legal requirements of the report?

A. Whether this million and ninety should be credited to profits or not? Is that the question?

Q. No, I understood you, Mr. Jameson, to say, when I asked you if the seven million dollars had not come into your possession—you said, "Yes, minus your expenses." Now, I am asking you if it is your judgment that the seven million minus the percentage of expense or $1,890,000,

should be deducted from the premiums to arrive at a profit—premiums written?

Mr. Leahy: Object to it as unintelligible.

[fol. 1865] Mr. Jacobs: Well, the witness hasn't said so. It might be for a lawyer.

A. I was just going to say it is too much for me.

Mr. Jacobs: This is an insurance man.

The Witness: There may be some expenses that have not been worked out yet, but certainly all the preceding years every dollar of it is worked out in the returns.

Mr. Jacobs:

Q. Now, Mr. Jameson, every dollar's worth of expense that you pay out in every year in that period is charged, isn't it?

Mr. Folonie: That question has been answered several times.

Mr. Jacobs: I know it has, but the witness backfires on me every so often.

The Referee: I take it this is an attempt to clarify the situation somewhat by rehearsing the part gone over so the parties may understand each other.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Answer the question.

A. I wish there were some way the companies could get that extra million eight hundred thousand.

Q. I don't know what your company would do with it, you have already got so much.

Mr. Folonie: We object to that comment as improper.

Mr. Jacobs: About as proper as the one of the witness.

The Referee: Never mind. Both should be stricken out.

[fol. 1866] Mr. Jacobs: Your Honor, I object to Mr. Street here, while this witness is on the stand, instructing him what to say in answering the questions.

Mr. Folonie: He didn't do it.

Mr. Jacobs: I just heard it.

The Referee: Just a moment. All parties except counsel should refrain from communicating with the witness on the stand during the process of his examination, directly or indirectly.

Mr. Jacobs: Now, read the question.

(Question read by the reporter, as follows:

"Now, Mr. Jameson, every dollar's worth of expense that you pay out in every year in that period is charged in there, isn't it?")

Mr. Jacobs:

Q. Charged off, isn't it?

A. Yes.

Q. In other words, at the end of the year you know what you paid out in expenses and it is there, every dollar of it, for every purpose, that your company suffered, isn't it?

A. Yes.

Q. Now, Mr. Jameson, did I understand you to say a while ago when I was asking you about certain deductions based upon your expense ratio that you had received the seven million minus the expenses paid?

A. Well, eventually, of course, we receive the seven million minus the expenses there.

Q. You feel, then, that a calculation which makes allowance for the expenses paid on the seven million dollars would justify the reduction of the balance from your premiums written, net premiums written?

A. That is too much for me to answer.

[fol. 1867] Q. Mr. Jameson, when you figure profit you don't figure that seven million dollars increased unearned premiums in your income at all, do you?

A. Well, it goes into income and then certain offsets are put on the other side. Just how that works out is not clear to me.

Q. Let me ask you, you say that seven million goes into income. How much of it is taken out when you figure profit?

A. Well, expenses are taken out.

Q. Out of what?

A. Out of the seven million.

Q. All right. Now, do you reach the basis of your expenses which you take out of the seven million dollars upon the basis of your expense ratio, namely 27 per cent?

A. I don't make up these reports. I couldn't answer that question.

Q. I am not asking you about the report but I am asking you as an insurance man, experienced in your business, if that is what should be done. If that is your idea of what should be done.

A. The question is, in figuring profits if I would—should that—if the million eight hundred thousand should be deducted or should not be deducted?

Q. Yes, should be deducted from the seven million dollars and thereafter the balance deducted from your net premiums received.

A. No, I wouldn't think so. Why should it be?

Q. What do you think should be done about it?

A. I think the way it is figured is all right.

Q. How is that?

A. Why, the addition is made to the reserve——

[fol. 1868] Q. (Interrupting.) What addition?

The Referee: What do you add?

A. The addition is made to the reserve, and on the other side you make your allowances for losses and expenses.

Mr. Jacobs:

Q. Well, now, what do you mean by the addition, and what addition is made to reserve?

A. The addition is made to the reserve to correspond to the increased liability outstanding.

Q. Do you mean by an addition to the reserve that there is a deduction from some other fund, and if so what fund and how much?

A. There isn't any deduction from any other fund, no; not involved in the addition to reserve, no.

Q. Well, all right. You have got net premiums written for the year, haven't you—a figure on that?

A. Yes.

Q. You are going to figure the profits of your company?

A. Yes.

Q. Now, you have paid all expenses of the net premiums written for the year of every kind and character, haven't you? That is, in your books, isn't it?

A. Why, that is a question that I think you need an expert bookkeeper for. The outstanding premiums are involved with the commissions accrued in those statements. That is a very involved question.

Q. Let's get back to our fundamentals, then. Your company pays its commissions, pays its taxes, pays its salaries?

A. No, it doesn't pay its commissions, you see, on the outstanding premiums.

[fol. 1869] Q. You mean to say that the commissions are not paid on the outstanding premiums and that in fact the agent does not retain his commission immediately that he collects the premium?

A. Well, when he collects it, but take the year 1922, 14 million premiums written, 5 million of that may be uncollected and the commissions on it not paid.

Q. Well, you collect practically on a cash basis, as you said the other day, don't you?

A. No, I didn't say we collected on a cash basis. Most agents have from two to three months to remit.

Q. That is merely an arrangement between yourself and the agent?

A. Well, at the end of the year there is an immense amount of uncollected premiums outstanding, and of course the commissions have not been paid on that; and I think that taxes, also, are paid on the premiums collected, I think—in some states, anyway.

Q. Now, Mr. Jameson, when a man gets a policy of yours he pays for it, doesn't he?

A. Pays for it eventually, if we don't have to cancel it for non payment.

Q. Well, do you deliver it to him before he pays for it?

A. Yes.

Q. Or do you deliver it to your agent?

A. The agent delivers the policy before he gets paid.

Q. If you send it to the agent you hold him responsible, don't you?

A. Sometimes he is and sometimes he is not; generally he is not.

[fol. 1870] Q. Well, that is merely your unfortunate selection of agents, isn't it?

A. No, the usual situation is the agent is not responsible for premium unless he collects it.

Q. From any premiums that might or might not be collected your increase in unearned premiums in its entirety is deducted from your income, for the purpose of calculation of profits, isn't it?

A. Yes; gross income.

Q. All right. Let's get down to those figures. Now, you have paid your expenses of operating your business, everything that comes up that year you have paid, haven't you?

A. We have paid on premiums collected but not on premiums written.

Q. Well, that is not an expense of the year, then. Whatever has been an expense of that year you have paid, haven't you? Paid your salaries, didn't you?

A. Yes.

Q. Paid your overhead, didn't you?

A. What overhead?

Q. Why, your stenographers or bookkeepers, your stationery, your stamps and your rent.

A. Yes.

Q. And your taxes?

A. Yes.

Q. And any other overhead expense you might have, that is true, isn't it?

A. Yes.

Q. In other words, you have paid the expenses as they came up in full and charged them at the end of the year, haven't you, as an operating expense?

A. We haven't paid the commissions on the uncollected premiums written.

[fol. 1871] Q. Outside of that, you have paid all your expenses, haven't you?

A. Well, as near as I can think now, I guess we have paid most of them, yes. May be some taxes.

Q. Well, that is because they are not due, isn't it?

A. We have paid any taxes that are due, certainly. Well, no. We pay the taxes the following year.

Q. Now, Mr. Jameson, when you said a while ago that your idea was that this seven million dollars increase in unearned premiums was received minus the expenses and deducted, minus the expenses, what did you mean?

A. Well, I meant that the premiums are received in our statement, which is made up on premiums written, you see. But those premiums are not all actually collected cash before the end of the year.

Q. Well, how about those that are collected?

A. Well, those that are collected——

Q. (Interrupting.) I mean that are part of what you call your increased unearned premiums at the end of the period. We are talking about the five year period, now, that you had seven million dollars increased unearned premiums. Now, what about the expense, is that first deducted proportionately and should it be, from that increased unearned premium, before you deduct the balance from your net premiums received, in order to calculate your profits?

Mr. Folonie: Objected to as entirely unintelligible and lacking in continuity of thought.

The Referee: Overruled.

[fol. 1872] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I am sorry I have to make a qualification every time I answer these questions, because I don't see how else it can be answered. As to the premiums actually collected, the expenses have been paid; but on the rest, the expenses have not all been paid. Some may have been.

Q. All premiums that are written, and whether collected or not, are carried on your books as an asset, aren't they?

A. Whether collected or not?

Q. Yes.

A. Unless they are over ninety days due.

Q. Just as soon as they are written you write them on as an asset, don't you?

A. Yes, and keep them there for ninety days.

Q. Do you believe that an expense percentage of 27 per cent, that 27 per cent of this seven million dollars, or $1,890,000, should be deducted from the seven million before the balance is deducted from your premiums written in order to figure profits?

A. No, I don't.

Q. What do you think about that?

A. Well, you asked me that before.

Q. But we never did get an answer.

A. The item is extremely involved, because the outstanding uncollected portion of that is a very large amount at the end of the year, and the commissions haven't been paid on it and there may be other things that affect that calculation.

[fol. 1873] Q. What other things?

A. How about the losses? You know these losses may run double what you have calculated on in your reserve. Suppose you have a conflagration like you had in San Francisco. You would be way up in the air.

Q. Of course, you are calculating upon a remote contingency, aren't you?

A. Well, a remote contingency that you would have a conflagration like you had in Frisco, but it is not a remote contingency that you might have double loss ratio that you figured on.

Q. Now, Mr. Jameson, outside of those premiums which have been written but have not been collected, and only considering those premiums which have been written and collected, that you have a sum of money which represents the increased unearned premiums, which has been actually collected and in your hands—now, before you deduct that amount from your net premiums written—for the purpose of ascertaining your profits—should you not first deduct a proportionate amount of your expenses, from the excess or increase?

A. Well, you could do that if you were not a very careful business man. Theoretically——

Q. (Interrupting.) Is that right theoretically?

A. Theoretically it is nearer right than it is actually or practically.

Q. Well, is it about right theoretically?

A. Well, I guess it is.

Q. All right. Now we have got that point, after some difficulty. Do you feel, Mr. Jameson, that of your incurred [fol. 1874] loss reserve that sum of money which represents your incurred losses or that liability which you set up, at the end of the period, that that will be settled fairly as a fair average at from 75 to 90 cents on the dollar?

A. I am sorry, but I didn't catch the first part of that question.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

Mr. Folonie: We object to confusing incurred losses and unpaid losses.

Mr. Hogsett: If you will analyze that question you will see there is absolutely no meaning to it. If you will just take it as read by Mr. Blume, it does not mean anything on earth. It is just a jumble of words. I ask that it be read again and Your Honor try to decipher some meaning out of it as it goes along.

The Referee: Read the question again, Mr. Blume.

(Question again read by the reporter.)

Mr. Hogsett: Now, what does that mean?

The Referee: Reframe your question, Mr. Jacobs.

Mr. Jacobs:

Q. Mr. Jameson, you have certain outstanding losses at the end of each period, haven't you?

A. Yes.

Q. You reach them upon an incurred basis, by certain methods of calculation, don't you?

A. Yes.

Q. Well-known to the insurance world?

A. Yes.

Q. Those losses are unpaid at the end of the period, aren't they?

A. Yes.

Q. And they represent the estimates that have come in from various sources, and are placed upon your books, aren't they?

A. Yes.

[fol. 1875] Q. Now, would it be fair to say, as an average, that those outstanding losses will be settled and are settled and paid at about from 75 cents to 90 cents on the dollar?

A. No, I think your estimate is too low entirely.

Q. What would you say?

A. Well, if you—the experience in our company is that those losses are settled about five per cent less than the estimates; about five per cent less than the estimates.

Q. Well, if your net paid and incurred losses for the period under discussion amount to $66,778,790.28, and there was an over-estimate of five per cent, that would amount to 160 odd thousand dollars, wouldn't it?

A. Five per cent of 66 million?

Q. Or perhaps 165 thousand, perhaps? I took the figure of 66 million plus, as your net incurred and paid losses, and while I have got it figured on a somewhat different basis than you, you gave the figure at five per cent. I used ten per cent. Now, five per cent of that would be in the neighborhood of one million—$1,650,000.

Mr. Folonie: Five per cent of what?

Mr. Jacobs: Of that 66 million.

Q. Can you state from your book what the increase in your incurred loss reserve was for this period, say at the end of 1922, for five year preceding?

Mr. Folonie: Object to taking increase of incurred losses——

A. It isn't in the book, anyhow.

Mr. Jacobs:

Q. You haven't got it in the book?

A. No.

[fol. 1876] Q. Well, assume for the purpose of this question that you have an increase in incurred losses for this five year period we are discussing, in your method of calculating incurred, figured on the $3,382,781.73. Now, if you have got that, if that is the correct figure, and we will assume for this question that it is, Mr. Jameson, and you have a five per cent excess there, that is five per cent more than it takes to actually settle those outstanding losses, that amounts to five per cent on this $3,300,000 plus, or in the neighborhood of $165,000, doesn't it?

A. If our outstanding losses are $3,300,000 more in our statement than they are at the beginning?

Q. Yes.

A. And we have as good luck as we usually have, we might say five per cent on that.

Q. Well, that would amount roughly to $165,000?

A. If we did, it would amount to $165,000.

Q. Now, if that is a fact, on that period, shouldn't that $165,000 be deducted from this increased outstanding loss sum in order to arrive at a true calculation of your five year experience?

A. Why, if you want to theorize you might do so.

Q. Yes, sir. Now, Mr. Jameson, the theory of rate making, originally, as contended for by you insurance people, and rate making under rate laws of various states, say, that would cut expenses and reduce commissions, wouldn't it?

A. Well, cut expenses. I don't know as it would reduce commisions.

Q. Wasn't the theory—argument—used for the purpose of securing rate legislation permitting the making of [fol. 1877] rates by companies acting in concert that it would cut the expenses and reduce commissions?

A. Cut the expenses, but not reduce the commissions.

Q. You don't believe that that argument was used or that there has been an increase in expense?

A. I don't know, but I can't see how it would reduce commissions. But it would cut the expenses enormously; if every company had to do all this work individually, why, the expense would be prohibitive.

Q. Well, isn't the history of the last ten years instead of being a reduction in expenses—or the last eight years—that there has been an increase in expense?

A. No.

Q. You say that is not so?

A. Not according to my opinion.

Q. That there has not been an average increase of from 38 per cent expense ratio to 42 per cent?

A. I don't see how there could be.

Q. You don't know whether that is a fact or not, do you?

A. I haven't looked it up, but I don't see how it could be. The commissions are less and expenses are less.

Q. You say the commissions are less now where those things are permitted?

A. Yes.

Q. Isn't it a fact that commissions have been increased in the State of Missouri?

A. I don't know.

Q. Isn't it a fact that over and above the legal commission there has been a new commission of ten per cent created in certain selected territory in the State of Missouri?

A. I don't know.

[fol. 1878] Q. If it is a fact, that over and above the regular commission of 20 to 25, there is an additional commission of 10 per cent in the City of St. Louis, amounting to $500,000 additional commissions per year, would you say that the theory of rate making under the present conditions in the state had been borne out?

A. Oh, yes, because the companies couldn't individually make a service—surveys and the rest—without tremendous increase in the expense of the business. The commission is a separate thing altogether.

Q. Well, has that been the practical, actual experience since rate making was permitted under present conditions, say in the State of Missouri?

A. Yes. Oh, in the State of Missouri, did you confine it to——

Q. Well, there are only a few——

A. (interrupting.) Why, yes; State of Missouri or any place.

Q. But the fact of the matter is there are only a few states that permit you to act in concert to fix average rates, aren't there?

A. No, all states do, as far as I know.

Mr. Hogsett: Object to that as immaterial.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Now, you have a 10 per cent preferential commission in the City of St. Louis which is over and above the commission paid in the balance of the State of Missouri.

A. I don't know.

Q. Amounting to, in total, $500,000 per year. Now, you pay that commission, don't you, Mr. Jameson?

A. I don't know.

[fol. 1879] Q. And an additional commission—you pay that additional commission for the purpose of securing business in that competitive territory, don't you?

Mr. Folonie: We object to doubling the question so as to first make an assertion that they do it and then tack onto it something else.

Mr. Jacobs: Withdraw that.

Q. I asked you to assume, and I assure you that I am correct about it, that in the City of St. Louis there is an additional commission of 10 per cent over and above the regular commission of the balance of the state, paid by the various fire companies.

Mr. Folonie: We object to such an assumption because it is not so.

Mr. Jacobs: Well, we will prove it.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, if that is a fact, and it amounts to this sum of money, you pay that additional commission for the purpose of securing the business the various companies do in that competitive field, don't you?

Mr. Folonie: Object, because it answers itself. Of course it does.

Mr. Jacobs: Of course, if Mr. Folonie wants to be sworn in this matter I will examine him.

The Referee: Overruled. The witness may answer.

[fol. 1880] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: I am not familiar with the commissions that are being paid in St. Louis, offhand. If there is a special allowance of 10 per cent, I think it must be for general agents, isn't it?

Mr. Jacobs:

Q. Well, it is allowed five per cent as additional commission and five per cent for some supposed inspection, but it amounts to ten per cent.

Mr. Leahy: That is purely argumentative.

Mr. Jacobs:

Q. I am asking you to assume this additional payment of ten per cent.

The Referee: The question assumes that matter as true. The witness may answer on that hypothesis.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. What is the question—never mind the assumption, but what was the question, again?

Mr. Jacobs:

Q. Whether or not that is paid for the mere purpose of securing business in the competitive field among the companies there?

A. Oh, why, I don't know what it is paid for—if there is ten per cent being paid.

Q. I am asking you to assume that ten per cent preferential commission is paid in that territory and that it amounts to $500,000 a year over and above the regular commissions on the business done in that city. Do you think, [fol. 1881] Mr. Jameson, that that additional sum of commissions should be charged as an expense against the policyholders in arriving at a rate, fire rate?

Mr. Polonie: We object, as calling for a legal conclusion, and secondly, that he is asking him to assume something and then asks whether it is right to do it, when the witness doesn't know whether it is done at all or not.

Mr. Jacobs: I am asking him to assume that.

The Referee: If he doesn't know he may say so.

Overruled.

(To which action and ruling of the referee plaintiffs by counsel, then and there at the time duly excepted and still except.)

A. Well, I said I didn't know.

Mr. Jacobs:

Q. But I asked you to assume the fact of the preferential commission.

Mr. Hogsett: I ask Your Honor to stop and think of the meaning of that question. He asks the witness to assume a given question and then he asks him the reason for it.

Mr. Jacobs: That question doesn't ask for the reason at at all, Your Honor.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

Mr. Folonie: Now, without any argument, just to state my objection: He is asked to assume that this is paid. Now, if he doesn't know that it is paid or why it is paid—and he couldn't know why if he didn't know it was done at all—then how could he know whether it was a proper or improper charge against Missouri? The question is self destructive and we object to it.

[fol. 1882] The Referee: So far as the assumption is concerned, that is a very simple matter and I think that doesn't trouble the intelligence of this witness. Then his opinion is asked as to whether or not, if that thing is done, and assuming that it is done, it is a proper charge in rate making. I think Mr. Jameson is qualified to say what he may think on that subject. The objection is overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: I don't know. Assuming that 10 per cent is being paid, I don't know what it is being paid for. Of course, the agents in St. Louis make the settlement; settle all the losses themselves, instead of sending field men to do it, and I think they do a lot of extra surveying and so forth. I don't know whether the fire patrol is involved in it or not. I couldn't say whether it is a proper charge or not.

Must be some merit in it if they are claiming they should be allowed 10 per cent extra, but I don't know the conditions. I couldn't say whether it is a proper charge or not.

Mr. Jacobs:

Q. Now, Mr. Jameson, Mr. Folonie, when I asked you the question about what the purpose of that increased commission was, got up and said it answered itself. That it was for the purpose of getting business. He announced that. Now, five per cent——

Mr. Folonie (interrupting): I didn't any such thing. I said the commission was for the purpose of getting business.

[fol. 1883] Mr. Jacobs: I think the court heard what you said.

Q. Now, Mr. Jameson, five per cent of that ten per cent is an increased commission flat, and five per cent of it is for certain inspection work; that is charged as an inspection charge, and of course the other five per cent about which I haven't said anything is additional contingent profit that the St. Louis agent can make that the other agents of the state can't. But I am not mentioning that particular five per cent, because that is a contingent matter. I am talking about the two five per cent increases, or ten per cent, that is actually paid in addition to the regular commissions of the balance of the state. Now, do you believe that that additional ten per cent on the commissions should be charged against the policyholders in arriving at a just and fair rate in the State of Missouri?

Mr. Folonie: We object, on the ground the witness has already answered the question, and because it seeks to ask the witness whether certain expenses actually paid should be excluded or not in his judgment, theoretically, and all we are concerned with is what is actually paid. We object to it.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Read the last part of the question, Mr. Blume.

(Question read by the reporter.)

[fol. 1884] A. Offhand. I don't see why the commissions should be any higher in St. Louis than elsewhere, but I expect what is at the bottom of it is that the people generally employ brokers to drum the market and there is a brokerage has to be paid. I presume that the explanation of it, but of course I am entirely in the dark. I don't know why the claim is made for an extra commission.

Mr. Folonie: Now, I submit he answered the question. And we ask the court to direct counsel to go to something else.

Mr. Jacobs:

Q. Do I understand there is a brokerage situation that arises in St. Louis?

A. I presume there is.

Q. Some of this commission is paid over to the broker for bringing in the business?

A. There may be.

Q. And that increase takes care of your brokerage situation?

A. Remember, I am just theorizing. I am guessing offhand. That exists in New York City, for instance.

Q. Now, if part of this increase is devoted to the payment of brokers, which amounts to a splitting of the commission with the man who brings in this business, and the balance of the increase goes to the agent, do you believe that that increase should be charged to the policy holders in arriving at a fair rate in the State of Missouri?

Mr. Folonie: We object as incompetent and immaterial and because the test in this case is as to the expenses paid and not some theory about how they might run the business different than they did during the five years which is the standard set up under the statute.

The Referee: Overruled.

[fol. 1885] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Why, certainly, it has got to be charged to the policyholders. Who else would it be charged to?

Mr. Jacobs:

Q. And you think it is fair and proper—and who else? That's right Mr. Jameson. You think, it's fair and proper that that broker commission should be charged against the policy holders of the State of Missouri in arriving at a fair rate?

A. Why certainly. They employ the brokers. Who else would pay it?

Q. Who else? That's right.

A. Certainly couldn't be paid from any other place except out of the premiums. People with large risks are never satisfied unless they have another intermediary broker.

Q. The fact is every expense is passed to the policyholders in the theory of the insurance business, isn't it?

A. Certainly. I may be way on my guess of why that ten per cent extra is asked for, but you put the question and I am answering the question as best I can.

Q. I understand. I think you are right about it. Now, Mr. Jameson, there was a loss in one year, say 1920 to '22, of 9 million dollars' worth of property in the United States, and a loss of 15,000 lives, wasn't there?

A. I have seen statistics to that effect, yes.

Q. Now, with the enormous loss of money and the appalling loss of life, do you think that present system, the present system of inspecting for value is adequate, that the insurance companies use?

[fol. 1886] Mr. Folonie: We object to speculating on that.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel, then and there at the time, duly excepted and still except.)

A. Why, I think the inspections are very good and getting better all the time.

Q. Well, you never had such a loss in your life for a year's business as you had in 1921 and two, when there was 520 million lost in this United States?

A. Yes, but don't you know what made it? That is plain enough. The losses actually were much less; getting less all the time. It is the increased value that makes those losses mount.

Q. There was a decrease in values in '22 and '21 over the preceding years, wasn't there?

A. No; never has been a decrease in values in any year since that period.

Q. Wasn't there in 1920, to such an extent there was a tremendous increase in incendiary fires?

A. There may have been a fluctuation in some kind of goods.

Mr. Hogsett: Are you insinuating that the voters of the State of Missouri would burn their property because of a shrinkage in value? The people that vote in Missouri?

The Referee: Any objection with special reference——

Mr. Hogsett: I object to the assumption in counsel's question——

[fol. 1887] Mr. Jacobs: Well, now——

Mr. Folonie (interrupting): I think we better have some campaign speakers.

Mr. Hogsett: I want to enter an objection in this record that Floyd Jacobs now makes, representing the State of Missouri, wherein he insinuates that the people of the State of Missouri would burn their property and commit the crime of arson because the values of their property have shrunk.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, let the record show that I was about to answer the witness that the chart issued by the Missouri Inspection Bureau claimed that to be a fact, and I don't make any personal claim about it.

The Referee: Enter the objections, gentlemen.

We will take a five minute recess now.

(Whereupon a recess was taken, after which the following proceedings were had:)

The Referee: Proceed, gentlemen.

Mr. Jacobs:

Q. You say, Mr. Jameson, that there has been a decrease in the actual fires occurring and that the increase is due to the increased value of the property?

A. Yes.

Q. Is it your idea that there has been, say in the last ten or twenty years, a marked decrease in the number of fires?

A. In the number of serious fires, yes.

Q. Do you mean by that that there is a corresponding decrease in the larger conflagrations over what is was [fol. 1888] back of that period?

A. Yes, particularly in the big cities; first class cities.

Q. Now, Mr. Jameson, did you ever see a chart promulgated by the Glens Falls Insurance Company in which they by a rising and falling line sought to establish the increase and decrease of fires, with the decrease and the increase of values?

A. No, I never saw that.

Q. Never have seen that. I think that is all.

Cross-examination by Mr. Folonie:

Q. You mean, Mr. Jameson, that while the amount of the losses has grown because of increased value the percentage of burnings has decreased?

A. Yes.

Q. When you put aside part of your premiums into an unearned premium figure, you pay your initial cost of acquiring the business and set aside part of the premium to go into the unearned figure, do your losses and expenses cease on those policies you have the unearned figure on, or do your losses and expenses still continue?

A. They continue.

Q. Do you agree with the report of the fire insurance committee of the National Convention of Insurance Commissioners, approved and adopted December 7, 1921, where they say, "Underwriting profit or loss is arrived at by deducting from earned premiums or incurred losses and incurred expenses"?

A. Yes.

Q. Do you agree with their statement in that same report that no part of the so-called banking profit or loss

should be considered in arriving at the underwriting profit or loss?

A. Yes.

[fol. 1889] Mr. Barker: We might object to that on the theory that the Missouri statute is not an underwriting statute. There are some statutes that that profit is aimed at, like Arkansas and Colorado.

Mr. Folonie: I am getting his opinions now.

Q. Do you agree with their statement that a conflagration is any loss in excess of a million dollars?

A. Why, I should think it ought to involve two or more risks.

Mr. Jacobs: Do I understand that answer to be that he does not agree with this book?

Mr. Folonie:

Q. Do you agree with their statement that a reasonable underwriting profit is five per cent plus three per cent for conflagrations, the three per cent allowance for conflagrations subject to revision if and when the record of conflagrations to be collected by the National Board show that such three per cent is inadequate?

Mr. Barker: I want to object to this manner of examination of the witness. If he has an opinion as to the adequacy of the return he has a right, perhaps, if he can qualify, to give that opinion; but I don't believe the proper way to reach it is to ask him if he agrees with somebody else on it.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Why, I have always thought and do still that ten per cent profit is what companies ought to earn, including the conflagration risk.

[fol. 1890] Q. Have you read the pamphlet, "What constitutes a reasonable underwriting profit and method of determining same?"

A. Who by?

Q. The national board of fire underwriters.
A. No.

Mr. Folonie: That is all with this witness.

Redirect examination by Mr. Jacobs:

Q. By the way, is your company interested in the national board of fire underwriters?
A. Members.
Q. You are a member of it. And he is reading out of a book there gotten out by a body of which your company is a member, wasn't he?

Mr. Folonie: I haven't read out of any book at all.
Mr. Jacobs: Yes, you have.
Mr. Folonie: Out of the National Convention of Insurance Commissioners.

Mr. Jacobs:

Q. You disagreed with some of the stuff that he read out of the fire commissioners' report, didn't you? You don't accept it in toto?

Mr. Leahy: He raises it from 8 to 10 per cent.

A. I should say strictly that a conflagration ought to mean two or more risks involved, but the amount could be lowered or raised. I don't think there is any material difference.

Mr. Folonie: That is all with this witness.
Mr. Jacobs: Just one minute.

Q. Now, since you have been asked, Mr. Jameson, whether you agreed with certain utterances by Mr. Folonie, let me ask you if you agree with this statement of Henry Evans, [fol. 1891] president of the Continental of New York, at the time he was testifying before the New York Insurance Commission——

Mr. Leahy (Interrupting.) That is the statement he repudiated?
Mr. Jacobs: Oh, no. He may have later; I don't know.
Mr. Leahy: Is that what he said was garbled up?
Mr. Jacobs: I am asking the witness if he agrees with this statement: "I don't care anything about a $2,500,000

or a $3,000,000 fire." That would be a conflagration, wouldn't it?

A. It would under that definition there.

Q. "I don't care anything about a $2,500,000 or a $3,000,000 fire, just as soon have it as not; it would put so much business on my books and put rates so high I would make it up." Do you agree with that statement?

A. I certainly don't, not by a jugful. I don't believe he meant it.

Q. You talked about you thought they ought to have what, about 10 per cent underwriting profit?

A. About 10 per cent underwriting profit all told.

Q. And a five per cent profit by your company on your capital—average capital—was $726.1—726.1 per cent, wasn't it, at 5 per cent?

A. I don't know. I haven't figured it, but we had a remarkably small capital for the liabilities we assumed.

Q. But on your average capital you did have a profit of 726. per cent underwriting—on the basis of 5 per cent, didn't you?

A. Oh, well, what do you mean underwriting on the basis of five per cent?

[fol. 1892] Q. Well, had a five per cent underwriting profit.

Mr. Folonie: For how long?

Mr. Jacobs: For five years.

Mr. Folonie: Well, that would be 25 per cent, then.

The Witness: Do you put the surplus and capital together?

Mr. Jacobs:

Q. I asked you whether or not on your average capital you didn't have a profit—figuring on the basis of 5 per cent underwriting profit, of 145.22 per cent per year, or 726 per cent for the five years.

A. Well, here, I haven't figured this thing.

Q. Figure it from '18 to '22, inclusive.

Mr. Folonie: We object because he has not been in business that long.

The Referee: Isn't this a mere calculation from data already in the record *in the record*.

Mr. Hogsett: Certainly; and already in the record.

The Referee: I think you need not figure that.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Now, Mr. Folonie asked you if your expense didn't continue on that increase—I presume he meant the increased unearned premiums, although I am not sure whether he limited it that way or not. The fact of the matter is that at the end of the year, or the end of the five year period, as far as the increased unearned premiums are concerned, all your expenses have been paid except possibly investment expenses, haven't they?

A. No.

[fol. 1893] Q. Haven't you paid all your operating expenses of acquisition and all ordinary carrying on of your business?

A. You asked me that before. The commissions on the uncollected premiums are not paid; and the adjustment expenses, and I don't know what else is involved.

Q. Well, adjustment expenses are very small, aren't they?

A. Well, they are comparatively small, yes.

Q. The fact of the matter is, speaking generally and speaking on an average and not speaking out some little exception, that increased unearned premium which you have at the end of your five year period, the expenses have all been paid and accounted for, haven't they, excepting your investment expenses?

A. No. There is a very important expense not paid, and that is the commissions of the uncollected premiums.

Q. Well, I say outside of those remote things—you have already charged those.

A. Outside of that, the expense wouldn't be very large.

Q. Outside of that, the expense would not be very large?

A. I say, outside of that the expense would not be very large.

Q. And every one of these premiums has been written in as an asset at the time, hasn't it?

A. Yes. You see, we have five or ten million uncollected premiums all the time. The commissions on that is a big item.

Q. Now, isn't it a fact, Mr. Jameson, that your company started in with a capital stock in '18 of $700,000? You had a capital stock in 1918 of $700,000, didn't you?

[fol. 1894] A. That is all the capital stock that was issued, yes.

Q. And you paid in the five years, including '18, the following: Cash dividends, $2,145,000, didn't you?

Mr. Hogsett: Object to that as all having been gone over.

The Referee: Yes, it has been gone over, I think.

Mr. Jacobs: I am not sure.

The Referee: It is all in the record, anyhow, except the mere calculation. Sustained.

(To which action and ruling of the referee defendant by counsel then and there duly excepted and still excepts.)

Mr. Jacobs: Very well. I think that is all.

Mr. Folonie: Q. You have about five million dollars unpaid premiums outstanding at the end of these various years he asked about, haven't you, Mr. Jameson?

A. At the end of last year it was between 7 and 8 million, I think.

Mr. Folonie: Q. And then this trifling amount he asks you to ignore in the way of unpaid expenses would be about 25 per cent which would be approximately two million dollars?

A. Yes.

Mr. Jacobs: I never called that a trivial amount.

Mr. Folonie: That is all.

Mr. Jacobs: That's all.

(Witness excused.)

The Referee: We will adjourn now until ten o'clock tomorrow morning.

[fol. 1895] Mr. Hogsett: You understand we will have for you Mr. Kurth and Mr. Street tomorrow.

(Whereupon an adjournment was taken until the following day at 10:00 o'clock A. M., the same being Thursday, the 25th day of October, A. D. 1923, at which time parties reconvened at the same place and the following proceedings were had:)

Mr. Folonie: On behalf of the witness Mr. Jameson, we desire to make a correction in his testimony, at his request, given to me over the telephone this morning. He says that he stated in his testimony that in the item of outstanding and unpaid premiums of about seven million dollars, 25 per cent of such sum was commission item; that therefore there was that amount of commissions or expenses in such outstanding item. On further examination he finds that that is incorrect, and that such outstanding premiums are in their report and the seven million dollar figure mentioned corrected, in that they are reported and put in those figures at 82½ cents on the dollar, instead of 100 cents on the dollar, so as to eliminate the commissions to come out of those items when paid.

Is it satisfactory to counsel for the defendant that this statement of counsel for plaintiffs may be admitted in lieu of the personal attendance of the witness?

Mr. Barker: Yes, we don't care for the personal attendance of the witness to make his correction. I don't understand what the correction refers to, but we have no objection to Mr. Folonie stating it, to save the witness being present.

[fol. 1896] Mr. Folonie: I will explain it to you briefly. He said, when asked by Mr. Jacobs about this seven million outstanding premium, he said or asked whether that was not all clear of expenses, and he said no, because there was 25 per cent, more or less, of agent's commissions to come out of that. And this correction takes that back. He really retracts what he said before on the subject.

Charles R. Street, called as a witness on behalf of the defendant, having been first duly sworn by the referee, was examined and testified as follows:

Direct examination by Mr. Barker:

Mr. Folonie: Let the record show Mr. Charles R. Street, president of the Fidelity-Phœnix Insurance Company, is

produced by the plaintiffs for the defendant at the defendant's request, pursuant to the terms of the stipulation heretofore entered into. The witness is now present in the room.

Mr. Barker:

Q. Your name is what, Mr. Street?

A. Charles R. Street.

Q. You are the president of what fire company?

A. Fidelity-Phœnix Fire.

Q. That company has an association of some kind with the Continental Fire Company?

A. No common ownership in any particular, but we are associated in business operations, as a matter of economy, to some extent.

Q. Does the Continental own your stock or any part of it?

A. Not a nickel.

[fol. 1897] Q. There is no joint ownership between the companies, then?

A. None whatever.

Q. Mr. Evans, the chairman of the board of directors of the Continental, is chairman of your board of directors?

A. That is correct.

Q. As president of your company are you in a general way familiar with the investments of your company, say for instance from the years '17 to '21, inclusive?

A. I was not president in those years.

Q. 1917 to '21——

A. I was manager of the western department, 1917 to '20; was vice-president in charge of the western department.

Q. Located where?

A. Chicago.

Q. And president since being here in New York?

A. 1921 and '22.

Q. After becoming president in '21, did you familiarize yourself in a general way with the form of securities invested in by your company?

A. I know what they are; that is a matter of public record, and of course I know from month to month the changes that occur.

Q. Have you had occasion and did you have occasion to follow in a general way what was known as the Lockwood

Investigating Committee's activities in New York in 1920, '21 and '22?

A. Through the newspapers.

Q. You did not testify in that hearing?

A. I did not.

Q. You are acquainted with the fact that Mr. Evans, the chairman of your board, did?

A. Correct.

[fol. 1898] Q. Has there been any difference in the form of purchase or sale of securities in your company since the final Lockwood investigating committee report?

A. None of which I have any knowledge, excepting as they have been dictated by market conditions.

Q. What I mean, Mr. Street is, did the effect of the Lockwood report, whether it was favorable or unfavorable to your company, cause any change in the purchase of the kinds of securities that you had been dealing in?

A. Not so far as I know.

Q. Your theory as president of the company is that being responsible to the stockholders of your company you may invest in any form of security you desire?

A. With the limits of the New York law governing investments.

Q. And there is no limitation upon the purchase of securities by fire companies in New York, is there?

A. There is a distinct limitation.

Q. And the effect of the Lockwood report did not change the kind of securities you are dealing in now?

A. No.

Q. Now, Mr. Street, are you familiar in a general way with the attempt which has been made throughout the country by different organizations to reduce fire losses?

A. I am.

Q. Does it make any difference to your company from a financial standpoint whether fire losses are reduced or not?

A. Very materially.

Q. Does it affect the profits of the corporation?

A. We make our best money out of low rate business; business which justifies a low rate.

[fol. 1899] Q. What I mean is, would it make any difference in the percentage of profit or loss if you had great losses or small losses?

A. The lighter the losses the more profit we make, of course.

Q. But in case of losses they are passed on to the policyholders in the way of rates anyway, aren't they?

A. Eventually.

Q. Now, then, are you familiar with the fact that in 1912 the per capita loss of the United States for fire was $2.16 per capita?

A. I have not the figures available. That sounds somewhere near right.

Q. And that in 1921 there had been an increase in fire loss per capita of $4.70, that is about right, isn't it?

A. The figure sounds reasonable, but I haven't the data available to give you an exact answer.

Q. And in 1922 the per capita loss was $4.90?

A. Probably.

Q. Now, can you explain in a general way why, if you had interested yourself, your company, with all these other activities in reducing fire losses, that they con-tantly mount in that proportion?

A. Fire losses in a general way follow business and climatic conditions. I don't think any of you will dispute the assertion that 1921 was a year of great depression following the inflation of 1920: and the post-war period.

Moral hazard developed enormously and to a considerable extent it has not yet been restored to a normal condition. Climatic conditions likewise have a great deal to do with fire losses. The State of California, for instance, ordinarily is one that affords a profit for the companies [fol. 1900] year in and year out, barring disasters like the San Francisco conflagration, but this year the state has been on fire in almost a literal sense from one end to the other, as the result of climatic conditions.

It has only been a few days since we were called upon to pay a very substantial sum in the finest dwelling district of the town of Berkeley, and purely the result of dry weather.

Moral hazard, climatic conditions and the inherent carelessness of the American people are responsible for the fire losses that we have and which are excessive and are a disgrace to the company and are in excess of those of any other place on the face of the earth.

Q. Now, during this same length of time which I have quoted as fire losses increasing from 1912, $2.16, to 1921, $4.90 per capita, is it safe to say there has been at least twice as much money spent for fire prevention throughout the United States in the way of fire departments, patrols and so forth—from '12 to '22, I mean?

A. Considering the general advance in prices, I should assume—and much larger areas to be protected in many directions—I should assume that there has been a very substantial increase. Whether it is twice over the figures of 1912 I can't say.

Q. Now, you refer to extraordinary losses in 1921. Have you had occasion to figure the loss ratio so far in 1923?

A. For my company?

Q. Yes, sir, and throughout the United States generally. You have had occasion, I take it, to figure 1923?

A. As regards my own company, yes. As regards the [fol. 1901] country as a whole I have no way of knowing excepting hearsay, as the result of conversation with other officials or representatives of other companies.

Q. If Mr. Best reports in 1923 the first eight months the loss per capita in this country is $4.80, would you think that about right?

A. The aggregate loss of the country for 1923, for the first eight months, are, according to the best means of compilation that we have, in excess of those of last year. So I should say that the figure was not far wrong.

Q. Are you familiar with the fact that in 1920 the United States had a per capita loss of $4.00, but Great Britain had a per capita loss of only 72 100 per cent?

A. That is one of those things that might be classed as a matter of common knowledge. I have no absolute evidence on that subject, but that is the general understanding.

Q. Then is it fair to assume, Mr. Street, that since 1912 the per capita loss of $2.16 in the United States and the first eight months of 1923 per capita loss, for the first eight months, of over $5.00, in the United States, that fire prevention is a failure?

A. Not by any manner of means. Without fire prevention we might have very few values left to protect.

Q. Well, as a matter of fact, you care very little about fire prevention because the rates are passed to the policyholders anyway, aren't they?

A. You are absolutely wrong in that respect. We care a great deal about fire prevention and spend a great deal of money in the cause of fire prevention.

[fol. 1902] Q. Enumerate just two or three general ways in which you spend that money.

A. Inspections, engineering visits, contributions to fire prevention bureaus which are engaged in that line of work, contributing the services of our men, as has been broadly done for years, in educating the public and contributing to the fire prevention activities of every organization worth while.

Q. And that has been increased in yours and other companies from time to time each year, perhaps?

A. Yes, it has.

Q. And notwithstanding that increased activity, the fire losses mount, do they?

A. The fire losses mount, yes. Those increases you have there for eight months are probably intended to represent the per capita loss for the year. They are at the rate of $4.90 or $5.00 a year, but not $4.90 or $5.00 for the eight months previous.

Q. Mr. Best reports fire losses for the first eight months of 1923 to over $5.00 per capita for those eight months, and not counting the four other months yet to come.

A. That would mean about $550,000,000 for that eight months, and that is a larger figure than I have seen quoted anywhere. I think the last figure that I saw for ten months, I am under the impression was something like $370,000,000, but that is only an impression. It is, however, easily verified.

Q. Mr. Best is an authority on statistics of that kind, is he not, Mr. Street?

A. Why, Mr. Best takes his figures from the Journal of Commerce, which is the only publication which makes a publication of that kind prior to the closing of the business for [fol. 1903] the year, when something like actual figures on losses paid and losses incurred are available.

Q. Just a statistician, in other words?

A. I suppose so.

Q. Now, Mr. Street, one question, please. Assuming that we are considering the five years experience in Missouri from 1917 to 1921, inclusive, let us assume that at the beginning of 1917 your earned premiums—I mean your unearned premium at the beginning of the period was $100,000. Now, all the expenses for the collection of that money had been paid at the beginning of that period; right?

A. Yes, if that is the unearned on the first of January, yes.

Q. All right. Now, let us assume that the 31st day of December, 1921, the end of the five year period, your earned premiums amounted to one million dollars; all expenses of that have been paid?

A. Yes.

Q. Now, figuring a five year period, the payment of the expenses on the $100,000 unearned premium on the 1st day of January, 1917, would naturally redound in benefit to the state as the money came in, would it not?

A. If that was the unearned premium on January 1, 1917 the expenses in connection with it would have been charged up in 1916.

Q. That is what I mean. The state would get the advantage of that money without bearing the expenses is what you mean, is it?

A. I can't answer the question in the form in which you put it, but if you will let me give you a homely illustration of the principle I think I can make it clear.

{fol. 1904} Q. I would be glad to, any way you want to. I think if you will understand my question we won't have any trouble about it.

A. The expenses are charged up because they have been paid and must be charged up. The reserve is charged up because it is something that we owe—just exactly like a deposit that you put in the bank. The bank has got to carry a reserve against that, because you may come for that money tomorrow. We carry it as liability because we may have to pay it out tomorrow. When we insure a man for 365 days and take, say $100 premium, we have liability to him for each of 365 days, and just as much liability the last day as on the first day of the policy. And we do not consider ourselves free to do as we please with that money in the way of spending it for salaries or paying it out for

dividends except as we earn it at the rate of 1/365 for every day.

Q. Have you finished?

A. Yes, sir.

Q. Now, what I mean is that the $100,000 unearned premium on the 1st day of January, 1917, all the expenses have been paid against that.

A. I will admit that.

Q. Now, then, at the end of the period, on the 31st day of December, 1921, with $1,000,000 of unearned premium, all the expenses have been paid against that?

A. Presumably, yes.

Q. So that if you figure that five year experience you are paying in 1921 the expenses on the $1,000,000 of unearned [fol. 1905] premiums, which extend through the years to come, are you not?

A. Certainly; but we are bringing over the unearned on what you had at the beginning.

Q. Just one hundred thousand dollars against a million; right?

A. Well, that is an increase of ten times, and that is—would be a rather extreme situation. It could only exist in the case of a company just beginning.

Q. But on the figures which I have given my conclusions are right?

A. Well, I don't know just what your conclusions are, but as I have said, the expenses are properly charged up because they have to be paid, and the reserve is charged up because we owe it, and the fact that that reserve carries over into previous years cuts no figure, because whether the company continues or discontinues business the advantage of the payments, or the prepayments of those expenses, is realized as the earnings accrue in subsequent years on your million dollars.

Q. Very well. Now, if you figure 35 per cent expense ratio, Mr. Street, please, at the beginning of the 1917 period on the $100,000 of unearned premiums, you have paid an expense of $35,000?

A. If that is your reserve—the 1st of January the expense would have been charged up in the previous year.

Q. Yes, sir; and that would be $35,000 you would have paid on this $100,000 of unearned premiums, is that right?

A. Well, assuming that the expense ratio is 35 per cent, why, then, whatever it was has been paid.

Q. Well, won't you agree with me that just for the sake of argument if it is $100,000 of unearned premiums and you [fol. 1906] have 35 per cent expense that you have paid for those $100,000 unearned premiums $35,000 expenses? That is right, isn't it?

A. I admit that it has been paid in the previous year.

Q. Yes, sir. Now, then, if you had $1,000,000 of unearned premiums at the end of the period and the expense was 35 per cent, you would pay $350,000 for those expenses, would you not?

A. That is the expense that would have been incurred and paid at different times during the five years, of course.

Q. So that the state gets the benefit at the beginning of the period of $35,000 expense, which you had paid before the beginning of the period, but is charged at the end of the period with $350,000 expense. Right?

A. Expense cuts no figure—the expense as applied to the reserve cuts no figure in the figuring of profits. You have got to charge up your expenses as they are paid, and your reserve, as I have explained, must be charged up for the simple reason that it is a liability as much as a deposit in the bank. You have got to pay it and you have got to carry it.

Q. Mr. Street, will you try and answer this question for me? I am trying to make it as simple as I can. At the beginning of the period you have $100,000 in unearned premiums, expenses have been paid aggregating 35 per cent, expenses $35,000. At the end of the period you have $1,000,000 in unearned premiums and the expenses likewise have been paid on that, 35 per cent, amounting to $350,000. Now, the result of a calculation of that kind is that the State of Missouri at the beginning of the period is given the bene- [fol. 1907] fit of $35,000 which you have paid $100,000 of unearned premiums, and at the end of the period the state is charged with $350,000 expenses which you have paid on those unearned premiums—is that right or wrong?

A. That is right. The state is charged with the expenses, of course.

Mr. Barker: That is all, Mr. Street. Thank you.

Cross-examination by Mr. Folonie:

Q. Mr. Street, have you any figures on how much your company paid on the San Francisco conflagration?

A. My company at that time was the old Phœnix of Brooklyn that subsequently was consolidated with the Fidelity to make the present company. We made those payments in San Francisco of about $5,600,000, and after collecting our reinsurance or such part of it as was good, our net payments were about $3,756,000.

Q. What was the capital of the company at that time?

A. One million dollars.

Q. So that the net payments of the company were about three times its entire capital in that one conflagration?

A. 3-3/4 times.

Q. And did the stockholders have to pay in any additional money to keep your company going after the San Francisco conflagration, besides the money that it had in its coffers at the time?

A. Yes.

Q. How much were the stockholders assessed?

A. $1,500,000 for 500,000 additional stock sold at a premium of 3 for 1.

Q. So that the stockholders holding a million dollars worth of stock had to pay in another million and a half to preserve what they had in there?

A. That is correct.

[fol. 1908] Q. Has your company been operating at an underwriting profit or an underwriting loss recently?

A. A small profit.

Q. And about what rate of underwriting profit has your company been earning in the last five or six years?

A. Not over three per cent.

Q. And what profit was your company making before the San Francisco conflagration, underwriting profit?

A. Why, I could only testify as to that in a general way but it was somewhere around four to five per cent.

The Referee: Pardon me, but read that last answer, please.

(Answer read by the reporter.)

Mr. Folonie:

Q. Had your company prior to that time been pursuing the policy of accumulating its funds to meet disasters?

A. We had.

Q. Do you know whether the fact is that the Home Fire & Marine Insurance Company in this San Francisco disaster had to assess its policyholders one thousand per cent approximately?

A. It is a matter of common knowedge that they——

Mr. Jacobs (interrupting): One minute, Your Honor. The defendant objects to testimony on the part of this witness which he derives from common knowledge as not being competent testimony, it being merely hearsay. If this witness knows from his own knowledge that there was an assessment of that character he can testify to it.

[fol. 1909] The Witness: I can answer in a way, I think, which will please you.

Mr. Jacobs: Wait a minute. Your Honor, I am not trying to be pleased by this witness in this matter. I made an objection to the court.

The Witness: I can meet the objection.

The Referee: It is sustained to this extent, the witness will of course testify only as to matters that he knows of his own personal knowledge.

A. As the Home owed my company money for reinsurance, I knew there was an assessment because we had to wait until it was collected before we got our money; but as to the amount of the assessment I don't know.

Mr. Folonie:

Q. With reference to fire prevention, or the activities of your company and other companies, have they taken the line of securing and prescribing uniform couplings on hose so that when a fire company gets to a fire one part of the hose would fit the other part, and standardizing the quality of hose and services of that kind. Has that been in the line of the activities of the companies which you have mentioned, with which you have been cooperating?

A. It is; through the Underwriters Laboratories, particularly.

Q. Has your company used the policy of giving credit to persons having insurance if they put in fire preventative measures such as fire doors, wire glass, sprinkler equipment, fire walls, and other means of preventing the spread of a fire?

A. We have. We maintain a very large and extensive [fol. 1910] engineering department for the express purpose of advising property owners how they may make such improvements as to secure the lowest possible rate.

Q. And is that taken advantage of by policyholders during the year so as to secure reductions in rates? Is it a frequent matter that the rates are reduced as to specific policyholders by putting in of such improvements tending to minimize fires?

A. It is.

Q. Do you consider that one of the measures of coercing people into taking precautions to preserve their own property?

A. It is our way of encouraging them to do it?

Q. Do you find it effective?

A. Very.

Mr. Folonie: That is all with this witness.

By the Referee:

Q. Mr. Street, is there a substantial uniformity between the various companies as to the amount contributed by them in the way of increased inspection and prevention of fire risks in proportion to the volume of business done by the respective companies?

A. A great deal of that work is done through bureaus in which substantially all the companies are represented, bureaus or other organizations. And the amount of work done by any one company or an individual office on its own account will necessarily vary quite widely. In the organization work, why, the companies generally contribute on about the same basis.

Q. Now, then, as to those features of the work in which there is a wide variance between the amount expended by the different companies, is there any reflection in the losses [fol. 1911] sustained by the companies to correspond in any sense with the amounts expended by them? In other words,

does the company which expends the larger amount in proportion to the volume of its business for increased inspection reap a benefit by reduction of losses, correspondingly increased expenditures?

A. As applied to the country as a whole, that would be a hard question to answer. As applied to an individual community or an individual state where one company has a superior organization, it invariably tells in the result.

Mr. Folonie:

Q. In other words, when the one company has a preponderance or a large share of the insurance in a community and spends a large sum for fire prevention in that particular community, it reaps an appreciable benefit in losses itself, in that community?

A. That is not true; but my observation was a little further, that you will find the company that has the best field men and the best inspectors and the best examiners is the company with the lowest loss ratio always. Their work tells.

Q. There has been a question made here as to the propriety of the earned premium basis as the method of calculation. How long in your experience in insurance has earned premium been taken as the predicate for figuring, or a basis for figuring, profit and loss in insurance companies, by themselves?

A. Ever since I have been in the business. It is a matter of 40 years.

Q. And is it a general method of companies for their own information? I am not talking about their reports to the states now, but their information for their own office and their own organization, to use the earned premium method [fol. 1912] of computation in their own affairs?

A. It is.

Q. And in your company do you use the basis of earned premiums and incurred losses and incurred expenses in calculating whether you are making a profit or loss?

A. Absolutely.

Q. In your judgment is there any doubt at all as to the property of those basis for the calculation of profit and loss?

Mr. Jacobs: One minute. The defendant objects to that question as being improper form of question, whether or not there is any doubt as to the propriety of it in the mind of this witness.

The Referee: What is your opinion as to the propriety, advisability or necessity of using that method of calculation?

The Witness: Will you read that question, please?

(Question read by the reporter.)

A. I regard it as absolutely necessary.

Mr. Folonie:

Q. Will you tell us why? Just explain it in your own way, contrasting it with the plan of using the basis of written premiums and paid losses and paid expenses, and tell us why one is right and the other wrong, if they are.

A. Because to use the incurred basis would mean the paying out in dividends or otherwise——

Q. (Interrupting.) Read that answer that far, Mr. Blume.

[fol. 1913] (Answer read as given, by the reporter.)

A. (Continuing.) —of money that should have been reserved for liabilities that are sure to appear. It would be like a banker——

Q. (Interrupting.) I think you misspoken——

Mr. Barker: Just a minute. Let the witness explain.

Mr. Folonie: No, but he has used one word by mistake.

Mr. Jacobs: You can correct him later, then.

Mr. Folonie: No, read it to him.

Mr. Jacobs: Mr. Blume, will you read that?

Mr. Hogsett: Do you want to take advantage of a slip? I want to correct him because I want him to state what is in his mind, and you gentlemen both know that this witness has made an inadvertent mistake. If you want to take advantage of that——

The Referee (interrupting): Wait a minute. The witness may proceed.

Mr. Jacobs: There have been some remarks about good faith in the examination of some witnesses by this court,

and in his presence now I just take this opportunity of objecting to the correction of the witness by counsel for the other side, which has repeatedly occurred during this hearing in this city.

The Referee: The referee understands the force and purpose of the objection, and it is sustained. The witness may complete his answer to the question, and of course opportunity will then be afforded for such further questioning as will develop the purpose and meaning of the witness, [fol. 1914] if there is any doubt. Proceed.

The Reporter (reading): "It would be like a banker—"

The Witness (continuing:) —who loaned out all his money without keeping anything to meet the demand for currency on the part of his depositors, the next day after he had taken in the deposit.

Mr. Folonie:

Q. Why take the earned premium basis rather than the paid premium basis?

A. Because it represents actual results.

Q. Now, you said in your last preceding answer that the incurred basis would be misleading and would cause a man to divide dividends among his stockholders when in fact the money was not his. Was it your intention to so state in making that answer?

A. If the alleged profits are to be calculated on the basis of written premiums and incurred losses without taking into consideration the matter of the reserve.

Mr. Folonie: That is all with this witness.

The Witness (continuing): It would produce a state of affairs which would not only be dangerous but absolutely impossible.

Mr. Folonie:

Q. You mean incurred or paid when you make that answer—when you say it is improper?

A. Incurred losses?

Q. Whether it is improper to say incurred losses, or improper to use the paid losses as your basis?

A. Incurred losses must be used, for the simple reason that you owe the money whether it is paid or not.

[fol. 1915] Mr. Folonie: That is all with this witness.

By the Referee:

Q. Mr. Street, this is a matter about which my mind is not clear. You stated a moment ago that it is absolutely necessary in determining the profit or loss of the given company that the calculation should be made on the basis of the earned premiums. Did I understand you?

A. That is right.

Q. Now, as between two different companies, the ultimate, final, conclusive evidence of which is prospering the more, in the last analysis, is determined by which is enabled to pay, after making proper provision, as required by law or the demands of good business, for its possible liabilities, the greater amount in dividends to its stockholders and accumulate a larger surplus, is it not?

A. That is the usual measure of success.

Q. Yes. Now, I am confused somewhat by your statement that it is absolutely necessary to determine that question by calculation on the basis of earned premiums. Why is it not possible with equal accuracy and certainty to determine it by a computation on the basis of capital or on the basis of capital and surplus? In other words, may you reach the same result either way?

A. Why, earned premiums—I don't know that I understand your question.

Q. Well, I will amplify it a little. If Company A, after setting aside appropriate reserves for liabilities, whether required by law or merely by the demands of good sound business policy, is in a position where it may distribute, say 1 million dollars, to its stockholders, in the form of [fol. 1916] dividends, or, which amounts practically to the same thing, put into its surplus 1 million dollars; and Company B is able to distribute 5 millions of dollars in dividends on its capital stock, or put it into surplus, Company B is making a more decided success in its business than Company A, generally speaking, is it not?

A. I should judge it would ordinarily be so considered, if conditions under which the money was accumulated were identical.

Q. Yes, and we are assuming they are substantially the same. Now, in determining whether or not the company is succeeding, holding its own or failing, and in determining to what extent the company is succeeding, is it not possible to ascertain that essential fact just about as well by calculating on the basis of capital and surplus as it is by calculating on the basis of earned premiums?

A. No, sir.

Q. Now, that is what I wish you would explain to me so I may grasp it more fully.

A. The capital and surplus may have been accumulated very largely out of the pockets of the stockholders originally, plus a profit on investments and capital and surplus, and in general bear no regular proportion and no regular relation to the re-insurance reserve, or vice versa. The company with a surplus of 5 million dollars might have a reserve of 1 million dollars; on the other hand, a company with a reserve of 10 million dollars might have only a surplus of 1 million.

[fol. 1917] Q. But whatever the fact may be, if you calculate on the basis of earned premiums and find as the result of that calculation that the company is making the actual profit, we will say, of 15 per cent, by the way of illustration, could you or could you not derive that same result, that same information, with substantially equal certainty by calculating from the same data, general information, which you calculate on the basis of earned premiums, on the basis of capital stock or capital stock plus surplus?

A. Why, in an individual case, Your Honor, that might be mathematically true. As a general proposition, it would be a dangerous proceeding, for the reasons that I have indicated, and it would result pretty soon in the establishment of a practical monopoly in insurance by the few companies that are well managed and able to pile up a surplus and make a little profit out of the business by economy in operation. It would immediately put all the little fellows out of business.

Q. Why?

A. The reserve proportioned to their final resources would on any sort of a scale which you might be able to make which would be considered as fair, would be something more than they could stand. Your suggestion would simply throw the business into the hands of a few large companies.

Q. Well, if the same degree of business acumen were used by the management of both companies, one calculating on one basis and one on the other, would a calculation on the basis of unearned premiums result in the financial solvency of the company so calculating, and the calculation on the [fol. 1918] basis of capital stock or capital stock plus surplus result necessarily in injury or destruction to the company using that method of calculation?

A. The calculation of earnings—or profits, on the basis of earned premiums, is the only way that would afford an absolutely safe basis in all cases.

Q. I understand the assertion, but I guess I don't so far understand the reason.

Mr. Polonie: May I interrogate him along that line of thought, perhaps to elucidate it?

The Referee: Yes.

Mr. Polonie (resuming cross-examination):

Q. Mr. Street, you may assume for the purpose of this inquiry that the Aetna Insurance Company was organized in 1819, been in business over a hundred years; that it had contributions by its stockholders by direct payments into the treasury of five or six hundred thousand dollars more than the amount of capital. In other words, the full capital and some of their surplus has been paid in. Let's take that company, compare it with—we will say that they have accumulated through this hundred years a surplus of 15 million dollars. Then take some company, comparatively new company, we will say, an insurance company in the State of Pennsylvania, for comparison, that has been in business for twenty years, had a capital of $200,000 paid in, surplus of $200,000. The insurance company of the State of Pennsylvania is writing, we will assume, a large volume of business in proportion to the business it has done. Now, as this new, comparatively new, company which has not piled

[fol. 1919] up a surplus over a hundred years of time, writes its large business, the surplus shrinks and goes into the reserve figure does it not?

A. It does.

Q. So that its surplus, as it did a good volume of business, would gradually get less?

A. Until the reserve would stabilize.

Q. Until it got to the stabilized point. Now, that company, having been formed comparatively new, its return on its investments would be comparatively nominal, compared to the other company, is that true?

A. Right.

Q. Now, suppose that you were starting in to allow a proportionate amount to each of those companies. Say we were going to allow them ten per cent on the capital of each company, or ten per cent on capital and surplus, and the Aetna had, by this accumulation of reserve, accumulated enough money so that its investments would bring it in 25 per cent on its capital stock and on the insurance company of the State of Pennsylvania would bring it in only 2 per cent, and yet on its capital stock that would mean the one company would not need to earn anything out of its insurance at all to pay a large dividend, while the other one, if it did not earn anything out of the insurance, would be lost?

A. That is right.

Q. Now, are some companies capitalized very low and some very high, in proportion to the volume of business they do?

A. They are.

Q. Do some companies have their surplus largely paid in and some of them accumulate it out of profit—get it different ways?

A. Right.

[fol. 1920] Q. Theoretically, now, if you were seeking to take two companies, one with a small capital and the other with a capital three times as large, and writing the same amount of insurance, is there any way that you can imagine that the two companies could get the same approximate return out of their business, if you are going to figure it on a capital and a capital and surplus instead of figuring it on their volume of business?

A. I know of one.

Mr. Folonie (addressing the referee): I don't know whether I have helped you or not, judge.

The Referee: Somewhat.

By the Referee:

Q. Mr. Street, with respect to the length of time in which various companies have been in business, insurance companies, the same situation exists in the insurance world as exists, say in the banking world, with reference to the different lengths of time the different banks have been engaged in business, does it not?

A. Naturally.

Q. With reference to the increases and decreases of capital stock the situation is much the same in the banking world as in the insurance world, is it not?

A. I presume so.

Q. Yes. With reference to amounts paid in by stockholders by reason of assessments made necessary because of business losses, the conditions are the same in the two lines of business, substantially, are they not?

A. Right.

[fol. 1921] Q. And with reference to the amounts of surplus either contributed by the stockholders or accumulated by the operation of the business, substantially the conditions are identical, are they not?

Q. With reference to outstanding obligations, both at all times while engaged in business have outstanding obligations which vary in amount according to the volume of business done, do they not?

A. Yes.

Q. The bank earns its profit, for the main part, in the way of interest charges, or at least largely so, does it not?

A. That is the banking business, lending money.

Q. Yes. And the insurance company earns its profit, at least so far as the underwriting end of the business is concerned, on the premiums received?

A. That is correct also.

Q. Now, then, is there any other greater reason why it is necessary to calculate the profits of an insurance company on the basis of earned premiums than it would be necessary to calculate the profits of a bank on the basis of earned interest?

A. I think the profits of a bank are calculated on the basis of earned interest. If you will look at the form of bank statement prescribed by the treasury department, and regularly published in our papers under the law, you will find that interest earned but not collected is carried as an asset and interest due but not paid is carried as a liability, and to all intents and purposes their statements are made on an earned basis.

Q. Yes. Now, then, that leads me to this further thought which I have in mind. The bank may calculate and deter- [fol. 1922] mine whether or not it is prospering or falling behind by a calculation on the basis of earned interest?

A. Yes.

Q. Yes. And the insurance company may do likewise?

A. Right.

Q. The bank may reach the same result, by ascertaining, from the means of information at its command, whether or not it is able to carry a small, a large, or no dividend, to its stockholders on its stock, may it not?

A. I suppose so.

Q. Why may not the insurance company do the same thing?

A. That is just exactly what we do, but before we can determine whether we can pay that dividend or not we charge up an increase in our unearned premium, if there is any, or we take credit for the decrease, if there is any, because we count that as a liability that is imposed on us by statute in every state in the union, and one which is absolutely essential to solvency.

Q. Now, irrespective of the statutory requirements, the method of computation is simply a step towards getting at the ultimate and decisive test, namely, whether or not the stockholders, or those, whatever you may call them, who are entitled to reap the net profits of the company, are to receive a profit or not? That is the ultimate decisive test, is it not?

A. Right.

The Referee: That is all.

Mr. Palentine: May I ask one question?

Mr. Jacobs: You have turned him over to me two or three times. Why do you want to examine him now?

[fol. 1923] Mr. Folonie: No, the court has pursued a line of inquiry which I would like to finish before I turn him back.

Mr. Jacobs: All right.

Mr. Folonie:

Q. Does this correctly state the situation, Mr. Street: That in computing the amount to be derived from policyholders and the profit to be made upon the transactions as between the company and the policyholders, you figure your percentage of profit upon the volume of the business or the amount of business transacted with the policyholders, or having derived that profit and secure it, you can then divide it up in any way you see fit, or not divide it up and keep it, or apply it to capital, or anything you like, after it is once a derived profit?

A. If it is a profit, why, certainly, we can do with it as we please.

Q. Now, to compare it with a bank, does a bank in fixing its interest rates to persons to whom it loans money fix its interest rates in any way upon the amount of the capital or the surplus of the bank? Does it compute its interest rate with reference to capital and surplus when it is dealing with the person whom it loans money?

A. Bank interest rates are governed by market demand exclusively.

The Referee: Plus the statute?

A. I don't know of any—well, subject, of course, to usury laws. But the capital and surplus of a bank have nothing to do with the rate of interest it charges, excepting as a limited capital and surplus may impel the banker occasionally to put up the rate of interest to discourage loans.

[fol. 1924] Mr. Hogsett: May I ask this witness a question, Your Honor, with the consent of counsel?

Mr. Jacobs: Yes.

Mr. Hogsett:

Q. Doesn't this apparent confusion here that we have been trying to clear up——

Mr. Jacobs (interrupting): I object to that statement; absolutely no confusion; just as plain as day already.

Mr. Hogsett: On the other hand, the court has said he was confused.

The Referee: The court wants light.

Mr. Hogsett: I will try to give it.

Q. Now, doesn't this whole uncertainty come to this: That in arriving at the number of dollars profit you must use the basis of earned premiums, incurred losses and incurred expenses, but that in determining——

Mr. Jacobs (interrupting): Wait a minute. Is this an examination or a statement? A speech into this record? We are trying to find out whether you are testifying.

Mr. Hogsett: I am cross-examining this witness.

Mr. Barker: The Court is satisfied.

The Referee: The court is not satisfied, if you please. I would prefer the witness may answer the question that has been asked. Then add to it such question as you choose, Mr. Hogsett. Now read the question, Mr. Blume.

Mr. Hogsett: I am not through with the question.

Q. Does it not come to this: That in arriving at the number of dollars' profit or loss that you must use the basis [fol. 1925] of earned premiums, incurred losses and incurred expenses? Answer that part first.

A. Absolutely.

Q. But in determining how much of a dividend you pay, you may with perfect propriety calculate that number of dollars as a percentage of capital or capital and surplus?

A. Right.

Q. Now, isn't that all that there is in it, in figuring how much profit in dollars you must use the basis of how much you have earned and how much losses and expenses you have incurred? That is correct, isn't it?

A. Right.

Q. But in determining how much of a dividend you pay——

Mr. Barker (interrupting): Address the witness.

Mr. Hogsett: I will address whom I please.

Q. But in determining how great a per cent of dividends you pay you may with perfect propriety relate that sum to capital or capital and surplus?

A. Right.

Mr. Hogsett: That is all.

Mr. Barker: I want to look at the commissioner and address him in the same way as Mr. Hogsett.

The Referee: Any objection to that proceeding will be overruled.

Mr. Barker:

Q. Now, Mr. Witness, you settle with the stockholders, one way, then, and you settle with the state, as a rate-making body, in another way, don't you?

The Referee: The question is addressed to you, Mr. Street.

The Witness: Is that a question to me?

The Referee: Yes, sir.

[fol. 1926] The Witness: Absolutely not.

Mr. Barker:

Q. You settle with the stockholder on the proportion of money which you pay him, derived from earned premiums—right?

A. Read that question, please.

(Question read by the reporter.)

A. To a small extent, yes.

Mr. Barker:

Q. And you settle with the state on the amount of premiums written. Right?

A. That is right.

Q. Then you settle with the stockholder one way and the state another and it redounds to your advantage, and that is the reason for it, isn't it?

A. I don't exactly get that question. I will say, however, that we account to the stockholders for all our profit, to all the taxing authorities for all our profit from whatever source derived; that we pay our taxes to the State of Missouri and other states in accordance with the statutes of those states and that there is no irregularity in the busi-

ness anywhere in our dealings either with stockholders or the states or with the public.

Mr. Jacobs: One minute, Your Honor. The defendant objects—if this gentleman has finished, the defendant moves to strike out that answer as not being responsive to the question. It was a long speech, the accuracy of which can be considerably questioned, to a simple question of whether he figured one way for the State of Missouri and one way for the stockholders.

Mr. Barker: He said he did, as I understood him.

The Witness: I should say no.

[fol. 1927] Mr. Jacobs: But then that is your answer instead of this speech you just made?

Mr. Folonie: Don't argue with him.

Mr. Barker:

Q. Now, then you settle with the stockholder on the earned premium basis?

A. That is the only—certainly. That is only one of the items, though, on which we settle with him.

Q. If you can answer that yes or no, I would like to have it. Can you answer it?

Mr. Leahy: He said yes. That is only one of the methods.

Mr. Barker:

Q. Is it right to say you settle with the stockholder on the basis of earned premiums?

A. We do settle with them on the basis of earned premiums.

Q. Then you settle with the state, which is making a rate, on the written premium theory; is that right or wrong?

A. For rate making purposes?

Q. Yes, sir.

A. On the earned premiums, it should be.

Q. Both of them should be settled on the earned premium basis?

A. Certainly.

Q. All right. To arrive at a percentage of profit or loss, is that right?

A. That is right.

Q. All right, sir. Now, then, Mr. Street, you say you have made about a 3 per cent underwriting profit, in answer to Mr. Folonie, but did you consider a three per cent conflagration hazard before determining that profit or not?

A. We considered no conflagration charge whatever. That was simply the difference between the earned premiums and the incurred expenses and losses.

[fol. 1928] Q. Now, your company——

The Referee (interrupting): Three per cent on what basis, Mr. Street?

A. 3 per cent on earned premiums.

The Referee: Very good.

Mr. Barker:

Q. Now, your capital stock on the first day of January, for instance was $2,500,000?

A. What year?

Q. 1918.

A. Right.

Q. Now, December 31, 1922, it was $5,000,000. Stockholders paid $3,500,000 for the additional capital?

A. Yes.

Q. Now, your surplus on January 1st, 1918, was $5,000,000 plus, and I see in 1922 $13,000,000 plus. About right, Mr. Street?

A. Approximately.

Q. Now, you have paid a cash dividend, 1917, '18, '19, '20 and '21 of how much—percentage, please? Percentage on capital alone, please.

Mr. Hogsett: Isn't all that in the record?

A. 1917, 20 per cent; 1918, it was 33 per cent—no, that is wrong. It was 27 per cent instead of 33 per cent. 1919, 30 per cent; 1920, 30 per cent; 1921, 35 per cent.

Mr. Barker:

Q. While you have that book handy, give me '22, will you?

A. That is not taken from the book.

Q. Well, you have your book, haven't you?

A. No, I haven't—I have got it in this publication here (indicating).

[fol. 1929] Q. What is it, please?

A. '22? In 1922 we paid $1,000,000 in dividends.

Q. Wasn't it $1,100,000?

A. No, sir, $1,000,000 according to this.

Q. What percentage is that?

A. That is 40 per cent on the old capital of 2½ million; 20 per cent on the increased capital of 5 million.

Q. Now, Mr. Street, there is only one way to figure the profits of a corporation, and that is against the capital stock, isn't it?

A. Why, capital stock has nothing to do with profits. Capital stock may determine the rate of dividend paid but it has nothing to do with profits.

Q. Well, then, you use the capital for the purpose of settling, at least, with your stockholders, do you?

A. Certainly. The stock certificates represent our relation to them.

Q. And for settling with the stockholders you use the capital stock, but in arriving at a rate in the state you use the volume of business; right?

A. You use the experience of the business.

Q. That means volume of business, generally speaking?

A. Volume is one of the things that determines the experience.

Mr. Barker: I believe that is all.

Mr. Folonie: That is all.

[fol. 1930] Wilfred Kurth, called as a witness on behalf of the plaintiffs, having been previously sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. Mr. Kurth, with a view to aiding the court in the inquiry which you heard him make here this morning with respect to making computations of profits predicated on capital or capital and surplus, have you prepared a little explanation to show, or designed to show, the impossibility

of doing that and still having a state bear its own profits and losses, as distinguished from the profits and losses derived from other states?

A. I have.

Mr. Jacobs: Now, wait a minute, Your Honor.

Mr. Folonie:

Q. Will you state it to the court for the court's information?

Mr. Jacobs: I want to object to that line of inquiry. I don't think Mr. Folonie ought to call a witness in and put him on the stand for the purpose of enlightening anybody. This is a lawsuit and there has been too much in this case. The witness is here, a capable and smart fellow. Put him on the stand and ask him what you want from him without al these adjectives.

Mr. Folonie: I don't know how I can serve my office as a lawyer any better than to enlighten the court if I can here, and I am trying seriously to do it.

The Referee: The court is—the court is under the impression that the entire purpose of this hearing is to shed as much light as may be shed by an explanation of the facts on the questions here involved. Objection overruled. Proceed, Mr. Kurth.

[fol. 1931] (To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: Answer?

Mr. Folonie:

Q. You may state it.

Mr. Jacobs: May we suggest, Your Honor, that all our cross examinations and our putting of the witnesses of the companies upon the stand has been for a similar purpose—to enlighten the court?

The Referee. That statement applies to all evidence introduced from whatever source.

Mr. Jacobs: And that we have been acting in perfect good faith along with Mr. Folonie in doing it?

The Referee: The court has never had any other idea than that respecting both sides.

The Witness: I had this typewritten statement here, and perhaps it is as brief as could be made to cover the subject.

Mr. Barker: Let me ask a preliminary question, please.

Mr. Folonie: Just make your statement.

The Referee: Proceed, General Barker.

Mr. Barker:

Q. You have been in the court room in this hearing substantially an hour?

A. This morning, yes.

Q. You prepared that before you came here?

A. Yes.

Q. How did you know this witness was going to testify as he did so you could prepare an answer just for Mr. Folonie? [fol. 1932] A. I was asked to be ready to come over here yesterday at half past two but I was not called, and this morning I was notified to come over.

Q. You didn't prepare this statement just to help enlighten the testimony of Mr. Street, then?

A. To set down the ideas of myself and counsel.

Mr. Barker: Very well.

The Referee: Proceed.

A. The impossibility of justly determining profits on the basis of a return on capital and surplus arises out of the fact:

(1) Foreign companies do not have capital and surplus in this country in any relation to the business done here but remit their excess earnings to foreign countries.

(2) American companies in some cases do business throughout the entire world, and if capital and surplus can be said to form any kind of basis for earnings, there is a marked element of error in that their business is not confined to the United States but extends over the whole world.

(3) Many companies do business only in a limited number of states and in some cases in only a very few states.

(4) Such a basis would be specially unjust to Missouri companies doing a preponderance of business in Missouri.

The effect of undertaking to compute profits on capital or capital and surplus is necessarily to make Missouri rates profit or suffer by the experience in other states. If all [fol. 1933] of the earnings of the companies in the United States be considered and it be determined, for example, that they are entitled to ten per cent upon capital and surplus from their entire operations, this furnishes no guide, unless it be sought in some way to relate the resultant figure to the Missouri business.

If this be done by proportioning, say on the basis of premium writings, it would produce the following consequences: This is on the theory of prorating premium writing—if the premiums for the United States for all companies be assumed to be $800,000,000 during a given year, and the Missouri premiums be assumed at $20,000,000, the proportion would be 1/40. Let it be assumed that the capital and surplus of all companies is $1,000,000,000. A 10 per cent return on this would be $100,000,000. Missouri paying 1/40, the profit to be derived would be $2,500,000.

During the succeeding year, let it be assumed that the capital remains the same, namely $1,000,000,000, the business in Missouri is identical, namely $20,000,000, but the business in the remainder of the United States increases only ten per cent, to $880,000,000. The proportion of the Missouri business $20,000,000, to the country's premiums, instead of 2.5 per cent, is now 2.2 per cent, so that Missouri would have its charge reduced to the extent of $480,000, although its business remained absolutely identical in every particular and the capital and surplus of the companies remain absolutely identical.

If, on the contrary, Missouri's business during a third year still remained identically the same as during the pre- [fol. 1934] ceding two years, but the premiums in the remainder of the United States fell off 25 per cent, due to cessation of insurance upon exports from the state of New York, or for any other reason, the result upon Missouri would be that with an identical business written upon identical property and with the capital and surplus of the companies identical, the business of the country being reduced to $600,000,000, and Missouri remaining at $20,000,000, the latter would have to pay of $100,000,000 profits 3.3 per cent, or $3,300,000.

Thus, during three years, with capital and surplus of all companies identical, the amount of business in Missouri identical, the character and number of risks exactly the same, and no change whatever except the amount of business done in the remainder of the United States fluctuating, Missouri would pay one year $2,500,000, a second year $2,020,000, and the third year $3,300,000.

It may be seen that despite an effort to base returns on capital and surplus, the effort fails, and the matter comes back to an inquiry as to the volume of business transacted, to which the premium rate must of necessity relate and be governed. Insurance is a service which must be compensated as a service, dependent upon the character, skill, fidelity and nature of the service. The rate of return must be dependent upon volume, and is as strictly determined by the volume transacted, irrespective of the amount and extent of investment—as truly as is the compensation of a commission merchant or a professional man.

[fol. 1935] It may be pointed out that if it were sought to abandon the theory of making each state independent of other states, so as to take a national base of computation, this would present insuperable difficulties, in that some companies operate internationally, whereas others in great number operate only in a limited number of states. Licenses to do business are issued by states and not by the Federal government, and therefore form natural, logical, units of division for rating purposes.

If some method were undertaken of determining proportions of capital or surplus investment in a state, it would require some basis other than premium income.

Other bases which may be considered are:

The amount at risk in various jurisdictions, because this presents the measure of liability in the jurisdiction. The same amount of premium derived in Missouri, where a preponderance may be dwelling house insurance, may present an entirely different amount of risk undertaken in the State of Alabama, where cotton may be the large source of premium income, or in Delaware, where gun powder factories may be insured, or Oklahoma, where oil may preponderate, or Minnesota, where large insurance may exist on grain. The amount at risk in a state is indicative of the capital and surplus at risk there, perhaps a little closer than the premium basis would be, but it still is illogical to adopt

this basis of division, because this would make hypothetical capital and surplus fluctuate with the local conditions in a state, perhaps in wide extremes, although it would in fact remain constant.

[fol. 1936] Another guide which may be considered and rejected is the basis of the value of agency plants in the state, their number and the amount invested in establishing them. This furnishes no just criterion, because one company may have spent double the money spent by another, established a much larger number of agencies, and still have a less valuable plant because less productive of returns.

It will be seen that any basis tentatively considered leads back to productivity and like every private enterprise—railroads, telegraph lines, and public utilities of that type, operating pursuant to franchise, with their capital invested in tangibles, are an exception—is measured respecting its return by the percentage of earnings upon volume of business done.

The Referee: Proceed, gentlemen.

Mr. Folonie: That is all we care to ask.

Cross-examination by Mr. Barker:

Q. Now, you think that is enlightening on this subject we were dicussing, Mr. Kurth?

A. I think it covers some points that I have already been questioned on, and clarifies them somewhat, yes, sir.

Q. Now, you prepared that yourself?

A. Yes, in conference with Mr. Folonie and Mr. Hogsett.

Q. They asked you to read it into the record for them, did they?

A. They asked me to prepare to answer questions on it, yes, sir.

Mr. Barker: I believe that will be all, Mr. Kurth.

Mr. Folonie: That is all Mr. Kurth.

(Witness excused.)

[fol. 1937] Mr. Jacobs: I presume you didn't write that down, Mr. Blume? We have no remote chance of knowing what that was until we get a chance to read it. I submit that has no enlightening influence on me.

Mr. Hogsett: Now, of course, counsel at Hartford, asked us to produce five witnesses for examination by them—Mr.

Jameson, Mr. Robertson, Mr. Buswell, Mr. Kurth, Mr. Street, and the president of the American Eagle, Mr. Swinnert. We have produced four of those witnesses, and Mr. Swinnert, the fifth witness requested to be here, is now in the State of Oklahoma or Texas and to be gone for an extended stay, and for that reason we are unable to produce him.

The Referee: Has either side any other evidence to offer at this time?

Mr. Hogsett: We haven't any at this time.

The Referee: Does the defendant desire to introduce any further evidence at this time?

Mr. Jacobs: Not at this time.

The Referee: Can we adjourn to a date certain, gentlemen?

(Discussion ensues.)

The Referee: Mr. Blume, the further hearing in this case is now adjourned to Monday, 10:00 o'clock A. M., November 19, 1923, at 818 Scarritt Building, Kansas City, Jackson County, Missouri; at my office.

(Whereupon an adjournment was taken as above indicated, to reconvene Monday, November 19, 1923, at 10:00 o'clock A. M., at 818 Scarritt Building, Kansas City, Missouri.)

[fol. 1938] (Pursuant to adjournment heretofore noted, parties reconvened in the offices of the referee, the Honorable John R. Williamson, #818 Scarritt Building, Kansas City, Jackson County, Missouri, on Monday, the 19th day of November, 1923, and there, by agreement of the parties and by the order of the referee, the further hearing of said cause was adjourned from #818 Scarritt Building to the fourth floor of the Kansas City Club Building in said city, to the hour of 10:30 o'clock A. M. of the same day; and thereupon the following proceedings were had:)

Appearances: For the plaintiffs: Mr. Robert J. Folonie, Mr. William S. Hogsett, Mr. John S. Leahy, and Mr. Ashley Ockrill; for the Defendant: Mr. John T. Barker, and Mr. Floyd E. Jacobs.

The Referee: Are we ready to proceed, gentlemen?

B. G. CHAPMAN, JR., called as a witness on behalf of the plaintiffs, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is the name, please?
A. B. G. Chapman, Junior.
Q. Where do you live, Mr. Chapman?
A. St. Louis.
Q. And what is your business?
A. President, American Central Insurance Company.
Q. In what business is the American Central Insurance Company engaged?
A. Fire Insurance business.
[fol. 1939] Q. And the allied lines that go with the insurance against the fire hazard, such as tornado, lightning and so forth?
A. Yes, and automobile.
Q. How long has your company been in business?
A. Seventy years.
Q. Seventy, you say?
A. Yes.
Q. And in what state is its domicile?
A. Missouri.
Q. And its principal office is in what city?
A. St. Louis.
Q. What is the specific address within St. Louis?
A. 408 Pine Street.
Q. What is the present amount of the capital stock of the American Central Insurance Company?
A. 1 million dollars.
Q. What was the amount of the capital stock of your company when it was first organized seventy years ago?
A. $300,000; $275,000 subscribed originally.
Q. And the amount of that capital was increased from time to time until it reached to that figure at its highest?
A. 2 million dollars.
Q. And before it reached that 2 million dollars figure what was the capital stock of your company just before that?
A. 1 million dollars.

Q. When was it increased from 1 million dollars to 2 million dollars?

A. In 1906.

Q. And when was the—had the 1 million dollars of capital stock invested prior to that increase, had it been paid at par?

A. Paid in full.

[fol. 1940] Q. So that 1 million dollars had been paid in against 1 million dollars capital stock up to the time of the increase?

A. Yes, sir.

Q. Then there was an increase of another million dollars in 1906, you say?

A. Yes.

Q. What event or occurrence did the increase of the capital stock follow?

A. The San Francisco conflagration.

Q. And after the San Francisco conflagration your capital stock was increased from 1 million dollars to 2 million dollars, was it?

A. Yes, sir.

Q. And during that same year?

A. During that same year.

Q. How much was paid for that million dollars of new stock which was issued at that time?

A. 2 million dollars.

Q. In other words, the persons buying the new stock paid for it 2 for 1?

A. 2 for 1.

Q. And since the time of that payment in, has the capital stock of your company since that time been changed at any time?

A. It has been reduced.

Q. When?

A. In 1914; March.

Q. And was there any special occasion for that?

A. Yes. The surplus had shrunk to a point where it was felt necessary to call on the stockholders to return half of their holdings; transfer 1 million dollars from capital to surplus.

Q. And your capital was then reduced to about what figure?

A. 1 million dollars.

[fol. 1941] Q. So that your capital stock at the present time is 1 million dollars and for that capital stock the stockholders, since the organization of your company, have paid in in money 3 million dollars, is that correct?

A. 3 million dollars, yes.

Q. Do you know—do you have with you or available any figures to show anything about the Frisco conflagration as to the effect on your company and as to the amount of losses?

A. No, I have no figures. The losses were approximately $1,600,000 odd dollars.

Q. That is of your company?

A. Yes.

Q. How long have you been president of your company?

A. Since April, 1917.

Q. In what states does your company do business?

A. In all the states of the United States except Mississippi.

Q. And have you at any time done business in Mississippi?

A. Yes, sir.

Q. And ceased when?

A. December 31, 1916.

Q. Your charter is issued by the State of Missouri, I think you said?

A. Yes, sir.

Q. What lines of insurance other than fire does your company write?

A. Explosion, riot and civil commotion, automobile insurance, and of course tornado and lightning.

Q. Well, you haven't mentioned hail. Do you write hail insurance?

A. No.

Q. Rain insurance?

A. No.

Q. You mentioned automobile insurance. Against what [fol. 1942] hazards do you insure owners of automobiles?

A. Fire, theft, collision and property damage.

The Referee: Not personal damage?

A. No, sir.

Mr. Folonie:

Q. The damage for injuries to persons is written by casualty companies as distinguished from fire companies, is it not?

A. Yes, sir.

Q. Do you say you write theft insurance on automobiles or not?

A. Yes, we write theft.

Q. Is your company paying any dividends to its stockholders at the present time?

A. Paid a dividend this year; first time since 1916.

Q. What dividend did you pay this year?

A. Ten per cent; on the 1 million dollars.

Q. On the 1 million dollars?

A. Yes, sir, on the 1 million dollars.

Q. And that is the first dividend you had paid since 1916?

A. Since March, 1916.

Q. What was the amount of the dividend you paid at that time?

A. We paid a dollar and a half a share for that first quarter.

Q. No more during the rest of the year?

A. No more during the year.

The Referee: Par value of your shares is what?

A. Now, $50.

Mr. Folonie:

Q. In connection with the conduct of your business, have you created or built up what are known as agency plants?

A. Yes, sir.

[fol. 1943] Q. Does your company do business upon the so-called agency plan, that is by employing agents to acquire business on a commission basis and send it in to your company for acceptance or rejection?

A. Yes, sir.

Q. And you have agencies in these various states that you have mentioned other than the State of Mississippi?

A. Yes, sir.

Q. What are the types or classes of agents who transact your business? How do you style them?

A. Local agents.

Q. Are there any agents superior to local agents?

A. Yes, we have some general agents.

Q. And they have what kind of powers, in general?

A. They have supervisory powers over local agents, either in one or more states.

Q. Do you have what are known as field men with your company?

A. Yes, sir.

Q. What is the general nature of their business?

A. Their duties are to appoint agents, inspect risks, occasionally adjust losses, and collect balances.

Q. What do your field men do in the way of inspection of risks? What do you mean by the term inspection of risks in that connection?

A. They inspect a risk on the receipt of instructions from the office, and they go through the building and examine the physical conditions, housekeeping conditions, and to ascertain if possible the moral condition.

Q. When such an inspection is made, and if it shows the moral or the physical hazard to be one that stands out conspicuously as more hazardous than the general run of [fol. 1944] business of the same type and same class, ordinarily is, do you cancel the business or refuse it?

A. Yes, sir.

Q. Now, in addition to the—how many field men do you have in your company? Do you know, approximately?

A. About thirty, I think.

Q. How many, if any, do you have doing such work in the State of Missouri?

A. Two.

Q. Where are they located?

A. One in Kansas City and one in Shelbina—I beg your pardon—one at Marshall; used to live in Kansas City, now living in Marshall, Missouri.

Q. Are those men stationed at one location or travel about in the course of their duties?

A. They travel about the state.

Q. In addition to the inspection of specific hazards made upon request, are there any organizations of which you or your company is a member or for which it contributes or the services of which it employs and pays for who make inspections?

A. Yes, sir.

Q. What are those organizations?

A. The Missouri Inspection Bureau of the State of Missouri and the various inspection bureaus in other states; survey bureaus.

Q. Is your company a member of the National Board of Fire Underwriters?

A. Yes, sir.

Q. Does it function also in the State of Missouri?

A. Yes, sir.

Q. Does the National Board of Fire Underwriters and Missouri Inspection Bureau make inspection of specific [fol. 1945] fire hazards, or do they make inspection of fire fighting and fire resisting apparatus such as waterworks and things of that kind, or both?

A. The National Board engineers pay particular attention to fire fighting and fire protection facilities; the Missouri Inspection Bureau inspects for the physical hazards.

Q. Do you contribute to those two organizations who perform those services you have mentioned?

A. Yes, sir.

Q. You know—I note in the reports filed here by various companies including your own their rating and inspection bureau expenses. Is that the character of bureaus to which you have reference in that expense item?

A. Yes, sir.

Q. From what sources do you derive income for the carrying on and the conduct of the business in which you are engaged?

A. Premiums on policies issued.

Q. Do you have any sources of income from any other moneys other than premium income?

A. Interest income on securities.

Q. Those securities are of what general type and nature?

A. Principally listed bonds.

Q. Do you have separate and distinct activities in your company in the way of investment income and underwriting income?

A. Yes, sir.

Q. Who supervises the two activities of your company, namely the underwriting and the investment end of your business—that is, the general supervision?

A. I do.

[fol. 1946] Q. And who in your company is immediately inferior to you in caring for those activities?

A. Our cashier keeps the investment records.

Q. And where do you get the money to invest in these securities that you mention?

A. From the premium income.

Q. And do you make any distinction in the method in which you conduct your business between the premium income which is earned and that part which is unearned?

A. Yes, sir.

Q. And do you make investment of the earned premiums that you derive from your policy writings?

A. Yes, sir.

Q. And any accumulated surplus that your company has, is that to a greater or less degree in invested form?

A. Yes, sir.

Q. And is your capital in invested or uninvested form?

A. Invested.

Q. Does it cost money to establish agency plants in your business?

A. Yes, sir.

Q. And what is the cost—I don't mean the amount, now, but what is the nature of the expenses or cost of establishing agency plants?

A. Principally in the time of the special agents in locating agents and arranging for the acceptance of the agency of the company; and that is the chief cost. And the incidental cost of supplies and licenses.

Q. And do you undertake in establishing—I suppose from time to time you establish new agencies in your com-

[fol. 1947] pany, and it has been established a long time?

A. Yes, sir.

Q. And makes agency changes from time to time by having agents die or quit your company or otherwise cease their connection with you, and replace them with others?

A. Yes, sir.

Q. And you scrutinize your representatives and make investigation as to their character and their ability and their standing, both financially and as to their responsibility, morally and otherwise?

A. Yes, sir.

Q. When from your experience and knowledge of your business, if a company should determine to quit business—I am assuming now that it is in a solvent condition—it quits business and desires to close out and sell its business, or as the term is sometimes loosely used, "reinsure" its business, or sell out of business as a going business, is the element of the nature and character of its agency plants, which in commercial life would be looked on as good will, more or less, is that a valuable asset if you come to sell?

A. Yes, sir.

Q. Is money paid for it by the buyer, in the event of buying a running, solvent concern? Is money paid for that element of good will in the establishment of agency plants?

A. Yes, sir.

Q. Do you derive any substantial premium income from any source except the agencies that you have mentioned and described?

A. Yes, a small part is derived from reinsurance or business of other companies.

[fol. 1948] Q. Excepting for that have you any direct writings of any substantial size that come to you except through agents?

A. No, sir.

Q. Do you have any?

A. None.

Q. Suppose that a request for insurance should come to your head office by mail from some town, how would you handle the placing of insurance upon that person who applied for it in a town where you had an agency or district where you had an agency?

A. We would instruct our local agent at that point to issue the policy.

Q. Do you in the conduct of your business—I don't mean with respect to the filing of reports with the state alone, but in the conduct of your own business, do you attempt to keep a record of or make computations respecting the amount of the premiums which are earned premiums, as distinguished from unearned premiums?

A. Will you repeat that question?

The Referee: Read it.

(Question read by the reporter.)

A. Yes, sir.

Mr. Folonie:

Q. And do you in the conduct of your business, for your own information and your own records, do you have computation and calculation made as to the incurred losses and expenses of your company as distinguished from the paid losses and expenses?

A. Yes, sir.

Q. How do you make use of the computations of earned premium and incurred losses and incurred expenses—for what purpose?

A. For accounting and bookkeeping purposes.

[fol. 1949] Q. In ascertaining whether your business for a given period has been profitable or unprofitable—I am now speaking of your underwriting activities—how do you make a computation from which to determine whether you are making or losing money in your underwriting?

A. Based on the earned premiums.

Q. And setting off against it what?

A. Reserve for the unearned premiums.

Q. Why do you take the earned premiums in making your computation of profit and loss rather than taking the written premiums?

A. Well, we have got to set up a reserve against the casualties that we insure against. We have no right to take the unearned premiums. There is a liability there for losses and expenses and the unearned premiums due policyholders.

Q. Now, for example, if you have a—take in during the current year premiums paid in advance upon a five year policy of insurance, how much, on December 31st of this year, in computing your year's experience, how much of that five year premium would you treat as earned and how much as unearned?

A. At the end of the first year?

Q. Yes. Do you recall the proportion?

A. I do not recall the proportion.

Q. Well, take it as a one year policy, then, written during the current year and it has not yet expired.

A. The reserve is 50 per cent of the premium.

Q. Why not take the whole of the premium that you derive for the current year and take the whole amount and put it into your figures, rather than taking only a half of it?

[fol. 1950] A. Well, a part of the premium is earned every day, and the requirements are that we follow in the annual statement 50 per cent on a one year policy and 90 per cent on a five year policy.

Q. Why divide it up that way? Why don't you just take all the premiums you wrote during the year and all the money you took in and treat it all as earned? Why treat part of it as unearned?

A. Because it is not earned.

Q. Well, you've got it, haven't you?

A. We have got the premium, yes.

Q. Why don't you just put that all in and say "We have got so much and paid out so much and what we have left is ours"?

A. Well, you have got a contingent liability against the unreported losses.

The Referee: On a given policy running for a term of one year the amount of that contingent liability daily decreases, does it not?

A. Yes, sir.

The Referee: And so with any policy, no matter what the term?

A. Yes, sir.

Mr. Folonie:

Q. And I suppose that the average of all the policies written during the year, in a rough way, is six months, some being written the 1st of January and some the 31st of December, during the current year, the average term of the policies as a whole is about six months?

A. Is about six months.

Q. The theory on which you take 50 per cent of those which have not expired on one year policies that are required—that are written during the current year—is that [fol. 1951] the reason why you carry only half of it?

A. Yes, sir.

Q. In other words, it is a rough rule of taking the average term of all the policies, that all the policies have run, and treating it as six months expired and six months unexpired?

A. Yes, sir.

Q. Now, you understand that that division of it, by way of 50 per cent earned and 50 per cent unearned, in Missouri, is imposed on you?

A. Yes, and in most states.

Q. And in making your report to the state you are required to do that, even though it might prove a little more favorable to you or a little less favorable to you than the actual closely figured fact?

A. Yes, sir.

Q. In a broad sense, does your work, that rule work reasonably accurate?

A. Yes, I should say so.

Q. And you recognize the impossibility as a practical matter of making a computation of the earned and unearned part of your premiums day by day throughout the year, do you not?

A. Yes, that would be wholly impractical.

Q. And in your business there are quite a number of rules similar to this which might be subject to criticism theoretically but which are adopted because they solve a practical difficulty?

A. Yes, sir.

The Referee: The degree of accuracy of that method of calculation might be affected, might it not, by the volume of business written at any particular period of the year?

A. Oh, yes; but the average would vary very little.

[fol. 1952] Mr. Folonie: About what part of the United States is this method of calculation where you take 50 per cent of the annual policies written during the year and treat 50 per cent as earned and 50 per cent as unearned of those remaining on the books at the end of the year—in how many states is that rule applied?

A. I think it *is* required in every state—with the possible exception of North Dakota. My recollection is that North Dakota requires a 40 per cent reserve.

Q. In other words, the same theory is universal but the proportion is slightly different in at least one state?

A. Just one, yes.

Q. But with the exception that it is a slightly variant proportion, the same method of getting at it is adopted even there?

A. Yes, sir.

Q. Now, in the conduct of your business in the 70 years you have been in business, have you accumulated a surplus in addition to your capital during that period?

A. Yes, sir.

Q. And has it been the policy of your company during the period it has been in business to pay out all of the money above the amount of its capital and reserve required by law, to divide all the remainder among stockholders; or to retain an amount in excess of it in the treasury of your company?

A. It has been the policy to retain part of it in the treasury.

Q. Why do you retain it and not divide it among stockholders?

A. Because the surplus is really a reserve for losses. We have large liabilities in some states that we have got to maintain that surplus to take care of, any unusual losses.

[fol. 1953] Q. Did you have the wisdom of that course impressed at the time of the San Francisco disaster?

A. Then, and prior to that time with other conflagrations.

Q. In what method is the investment part of your business conducted? By that I mean—you have mentioned a cashier, I think you said, who has charge of the securities and principally listed bonds. Do you keep on your books and records a separate record of your income from investments and your income from underwriting?

A. Yes, sir.

Q. Do you separately report the income derived from your investments and the income derived from your underwriting, to Missouri and other states in which you do business?

A. Yes, sir.

Q. Are you familiar with the annual statement blank which you file with the State of Missouri annually?

A. Yes, sir.

Q. Do you recall that there is a page in that styled "Underwriting exhibit"?

A. Yes, sir.

Q. And do you recall that on that page it is required that you make a computation and report of the earned premiums, the incurred losses and the incurred expenses, and strike a balance between the earned premiums on the one hand and

the incurred losses and expenses on the other, and show the balance as an underwriting profit or loss?

A. Yes, sir.

Q. In your judgment is that a correct and proper method of ascertaining and determining the activities of your company in its underwriting business?

A. Yes, sir.

[fol. 1954] Q. And does such a statement, if correctly made up from your books and records, truly reflect, in your judgment, the experience of your company during the given period, respecting its underwriting activities?

A. Yes, sir.

Q. Now, do you recall that in that same annual statement on the opposite page there is what is styled an investment exhibit?

A. Yes, sir.

Q. And you recall that there you show your income from your securities, the gains on those securities and the losses upon them, the interest and dividends received on them, and the expense of the conduct of that business, and the balance showing the profit or loss upon that entire investment activity?

A. Yes, sir.

Q. Now, does that statement as so computed in your judgment truly and correctly reflect, assuming it is correctly made up according to your books and records, does it truly reflect the investment experience of your company for the given period?

A. It does—with what I personally consider one exception.

Q. What is that?

A. That is the arbitrary setting up of an investment expense.

Q. You mean the item of ⅛ of 1 per cent of the mean invested assets?

A. For a two year average.

Q. Now, before going any further on that—I will come back to it in a few minutes—is the method of setting up your underwriting experience and your investment experience done the same by all of the companies who report to the State of Missouri—I mean, is it the same kind of [fol. 1955] report for all companies?

A. Same report.

Q. It is not something special from your company?

A. No.

Q. Where do you get the blanks to fill those in on?

A. Furnished by the State of Missouri insurance department.

Q. Has that been true as long as you have known anything about the business?

A. Yes, sir.

Q. Is the requirement to furnish information in that method universal throughout the United States?

A. Yes, sir.

Q. Now, to get back now to your suggestion of $\frac{1}{8}$ of 1 per cent of mean invested assets which are used as an expense to the investment side and credit to the underwriting—or just vice versa—in other words $\frac{1}{8}$ of 1 per cent on the mean invested assets, you are required to use as an expense on your investment sheet, are you not?

A. Yes, sir.

Q. Then you are required to make a corresponding item to balance it on the underwriting sheet?

A. Yes, sir.

Q. Now, you say that your personal view of it is that that is not correct and not proper?

A. That is my own personal view of it, because I don't see how you can allocate any particular expense to investments.

Q. When you say you cannot allocate any particular expense, you mean that the expense is so extremely trifling that it is not properly the subject of calculation?

A. Yes, practically nil.

[fol. 1956] Q. Now, take with your own company, we have had the evidence, for your information so you will know why I am bringing this out a little in detail—had the testimony of the Home Insurance Company and the Continental Insurance Company and some of the New York companies which have had investment activities and have a separate department entirely from their underwriting. Is that true of your company, that you have a separate officer and separate employes handling that part of your activities?

A. No.

Q. How much or little of your time personally does the investment end of the business take?

A. Practically none. I couldn't tell you just exactly how much. It is just one of the many duties that I perform, just as the records of securities and investments is only part of the duties of the cashier.

Q. And you think that—it has been computed for us that with these other companies the 1/8 of 1 per cent of mean invested assets would run from 2 to 1 per cent of .5 of 1 per cent of the earned premium figure—I mean, relating it to that amount. Do you think that that proportion would hold true with you, or would it be more or less with your company?

A. I should think it would be less, but it is almost impossible to calculate it.

Q. In other words, you find it an item that is varying in amount and practically impossible to determine with any accuracy as to what it amounts to, does that sum it up?

A. Yes, sir.

[fol. 1957] Mr. Jacobs: Just a minute. The defendant objects to that question, not only because it is leading but because that is an assumption of something this witness has never said. He has said it is impossible to arrive at. He hasn't said it is so trifling that it is beyond calculation, but it is a matter that he can't separate.

Mr. Folonie: He said it was practically nil, is his previous answer. I don't think I am unfairly stating the effect of what he was just stating. Perhaps it is a little improper for me to restate it, but I was trying to sum it up in one concrete answer.

The Referee: The question is leading, as far as that is concerned.

Mr. Folonie: I think that is a just objection.

The Referee: Sustained to that extent.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie:

Q. I wish you would sum up very briefly, Mr. Chapman, what you meant when you said you thought that charge of 1/8 of 1 per cent of mean invested assets was an improper or unjust charge in the investment exhibit. Just give it to us in one concrete sentence.

A. Well, it averages with us about $6,000 a year, and my time in examining securities offered for investment is not a daily occurrence. It is an occasional thing; takes very little time. The time of the cashier is merely devoted to keeping these records and a tabulation of interest maturities where the coupons have to be cut or checks for divi- [fol. 1958] dends received and deposited. The time devoted to it is so slight, so little, that I couldn't calculate how much time I did devote to it nor how much time the cashier devotes to it, because it is not a continuous thing.

The Referee: You spoke of a two year period a moment ago, Mr. Chapman, in connection with this method of calculation. I didn't understand in what way you used that expression.

A. Well, it is—my recollection of it is that the method of calculating that ⅛ of 1 per cent is the average for two years; the mean invested assets average for a two year period.

The Referee: In order to get the basis upon which you make your calculation?

A. Yes, sir.

The Referee: I see.

Mr. Folonie:

Q. In other words, to obviate more or less your fluctuation of your investments from year to year, they take two years instead of one year and then take the average between the two?

A. Yes.

Q. And then make your computation of ⅛ of 1 per cent on that figure so arrived at?

A. Yes, sir.

The Referee: And in that way procure the annual expense of the investment feature of your business?

A. Yes, sir.

Mr. Folonie:

Q. It is reduced to a one year basis by your method of calculation, however?

A. Yes.

Q. Now, to what extent and how far, if at all, do you use your capital in the direct conduct of your underwriting [fol. 1959] business? I am not talking about surplus at all but about capital. How far, if at all, do you use it directly in your underwriting activities?

A. Don't use it at all.

Q. I am trying to find, Mr. Chapman, how closely you parallel the activities, say, of a railroad, which will invest its capital in ties and locomotives and stations and so forth, or a manufacturing company which invests its capital in goods and so forth—tell the court how you employ your capital in your business, it at all?

A. We have none of the physical assets that a railroad or manufacturing concern would have. We must maintain our capital intact because any impairment of that capital means an impairment which would automatically force us to wind up our business.

The Referee: Irrespective of any statute?

A. Well, I am not sure about the statutes, except that I believe that the statutes do require us to keep our capital unimpaired.

The Referee: But I say without regard to the requirements of any statute, would it be necessary to maintain the capital?

A. Why, I should think so.

Mr. Folonie:

Q. And with respect to your surplus, how do you employ that, if at all, in your activity of underwriting?

A. That is all employed in the expenses, losses and conduct of the business.

Q. Does any part of that surplus at any time flow into or become commingled with that portion of your assets which are set aside as a bookkeeping item as an unearned premium reserve?

A. Yes, sir.

[fol. 1960] Q. Do you derive your entire reserve so set up out of premiums—current premiums writings, or not?

A. No, we cannot.

Q. Have you any judgment of how much of your unearned premium reserve as it is set up from time to time

on your books and your statements to the various states, about how much of that has been taken out of surplus, in a general way?

A. Approximately 40 per cent.

Q. Does that mean, then, that the other 60 per cent comes out of premium writings?

A. Current premiums.

Q. Now, does the amount that comes out of surplus and goes into the unearned premium writings, does that fluctuate or vary any with the proportions of term business that you have on your books?

A. Oh, yes.

Q. What effect does that have on it?

A. Well, on a five year policy we would be required to loan the reserve account more from surplus because we are compelled to put up 90 per cent of the gross premium, without any deduction for commissions or other expenses. On the one year policy the reserve requirement is 50 per cent, probably would be a little less, borrowed from surplus.

Q. Why, when you get in your premium of 100 per cent from the policyholder on a five year policy, why don't you just take 90 per cent out of that and put it into reserve?

A. You haven't got the 90 per cent.

[fol. 1961] Q. The policyholder paid you in 100 per cent, didn't he?

A. Yes, but the agent—the agent deducts his commission first and then there are overhead and incidental expenses of the business that must come out of the premium income; you haven't 100 per cent.

Q. Have you got the 90 per cent?

A. No, sir.

Q. Now, as time goes on and that policy matures, do you keep these reserves policy by policy, or is there a calculated amount upon your whole business?

A. Merely a calculated amount upon the whole business.

Q. Do you keep this reserve physically set aside and separated from your general assets?

A. No, sir.

Q. In other words, if you have a bond on your books, we will say a Liberty bond, are you able to say whether that amount invested in that bond is derived from capital, earned

premiums, surplus, unearned premiums, or what the source of the money is that is in that bond?

A. No, sir.

Q. Do you undertake to keep it separated in that way at all?

A. We cannot.

The Referee: Why not?

A. Because the money as it is paid in goes into the general account of the company, and when we feel that there is an accumulation of funds over and above an amount that we safely keep in free balances to pay the losses and expenses, we invest it. We cannot trace the source of that money that is invested, whether it is from premiums, interest, or otherwise.

[fol. 1962] The Referee: Could you with reasonable accuracy on the basis of proportion divide that amount so as to show what amount was derived from one source and what from another?

A. I don't believe we could. I don't see how it would be possible to do so.

Mr. Folonie:

Q. Why?

A. Because——

Q. (Interrupting.) Try to elaborate a little to make it a little clearer.

A. Well, your premiums are not paid merely on a single policy. The agent issues the policies during the month and within thirty or sixty days he remits for those policies, less his commissions and some incidental expenses that he might incur. That money is simply banked when it is received, and there may be losses on those policies during that time. We can't tell. We can't segregate the particular premiums on any policies and set them aside and say that those represent the investment in any bond or stock or other assets.

Q. Suppose, for example, you had ten policies written in Sedalia, Missouri, agency during a given month, and they brought you in $1,000; and then there was a loss under one of those policies before the money came in to you of $5,000. Then you would have reserved to set up against those policies other than the one on which the loss hap-

pened, besides caring for your particular losses, would you not?

A. Yes, sir.

Q. Besides caring for that particular loss?

A. Yes, sir.

[fol. 1963] Q. Then you would have recourse to what source to get your money for your reserve and that loss that happened on that one policy?

A. Surplus.

Q. These agency balances—meaning the money that the agent has collected or extended credit for and which he is bound to account for to you—what is the average time that those balances are outstanding in the usual course? In other words, how long afterwards do they come to your hands?

A. They average about sixty days.

Q. And I suppose that when an account comes to you, some of those are earlier and some are later, that come in the remittance, but the average, you mean, between the early and late ones that he remits are sixty days, for those that he sends in?

A. Yes. A great many agents send in a check with their account, others pay in 15 days, some 30 and some 45, and some not for 90 days.

Q. Now, when the time expires which you allow the particular agent to make his remittance, we will say 60 days for example, suppose a large part of the policies that he has written, for which he is undertaking to report to you, happen to be cousins, brothers and partners and so forth of his, and whom he wants to extend credit. Do you carry those as credit accounts along, or does he pay those to you irrespective of whether he has collected them?

A. He must pay them to us regardless of whether he collects them or not.

Q. Then it is his business to the extent that he can give credit if he wants to but he pays you whether he collects [fol. 1964] or not?

A. Yes, sir. We do not extend credit to policyholders.

Q. Now, if the agent extends credit and before the time comes for his remitting in to you the policyholder cancels off the policy and declines to pay the premium—do those situations ever arise with you?

A. Frequently.

Q. Do the agents in such cases demand or request of you that you cancel flat, so-called, or—that is, to let it go along without paying any premium on it?

A. They sometimes make that request.

Q. What is the course you adopt as to a general rule, if you have any rules, for such cases?

A. Our general rule is to require the agent to pay the earned premium for the elapsed time. If there are some special circumstances, where a concern fails or for some reason the policy was not wanted, we may compromise with him. We may stand the first thirty days of earned premium and make him pay the balance; in three months, for illustration, if it has run three months and he presents what we consider a valid reason why he couldn't collect we may make an exception, but our general rule is to require the earned premiums for the elapsed time.

The Referee: Now, right on that point, Mr. Chapman, take a case where you have a premium of $100, say, assume the agent's commission would be $25, assume that the policy is canceled at the expiration of the 90 days' period, with the premium not having been paid by the insured at all. How [fol. 1965] do you adjust that specific case with your agent?

A. We require him to pay the earned premium.

The Referee: Which would amount to, say, what?

A. For 90 days?

The Referee: Yes.

A. Well, it would be canceled pro rata; a fourth of the premium.

The Referee: ¼ of the premium, $25, yes.

A. Yes.

The Referee: The agent's commission on the assumed basis would be $25?

A. Well, but he must give up his pro rata proportion of the commission, too.

The Referee: What profit does the agent receive from that transaction?

Mr. Folonie: By way of commission, you mean?

The Referee: By way of commission.

A. Well, he would simply deduct his pro rata commission of the amount paid. If he has to pay it himself, he would pay us less the commission on the $25.

Mr. Folonie:

Q. Assuming a 25 per cent commission, how much money would he keep out for commission?

A. He would keep out 25 per cent of the $25.

Q. That would be $6.25.

A. Yes.

Q. What the court is getting at now, do you say, "Well, now, he has had this insurance for one-fourth of the year," which would be $25 premium, but the agent has got a commission of $25, so we will cancel this off and the company get nothing?

[fol. 1966] A. Oh, no, we don't do that. If the agent paid the whole premium of $100 he would deduct his $25 and pay us 75. Now, if he is unable to collect from his assured and we require him to pay the earned premium, he pays the earned premium less his earned commission.

The Referee: That is, the one-fourth of $25?

A. Yes.

The Referee: $6.25 that he retains.

A. Yes, sir.

The Referee: What does the company get out of it?

A. The company gets the difference.

The Referee: $18.75?

A. Yes.

Mr. Folonie:

Q. You have a problem which has been presented for consideration, Mr. Chapman, several times. In that a suggestion—instead of making a computation of the profit which you would be entitled to derive from your business, instead of computing it upon a percentage of the volume of business transacted, it has been proposed that for tentative consideration we undertake to allocate the capital or the capital and surplus in some way to the various states in which you are doing business, and ascertain what a reasonable return would be on that portion of your capital or capital and surplus—then undertake to derive from the business of the state such an amount as would give you that percentage of your capital and surplus so allocated to [fol. 1967] the state. Is such a method of calculation practical or feasible or proper, in your judgment?

A. No, sir.

Q. Well, now tell us why, because your answer is only valuable as you can give us some reason for it?

A. The entire capital and surplus is liable for the losses in any state. They might be wiped out by a conflagration in any state. California, when we had the conflagration out there, practically wiped out the capital and surplus; required a refinancing. You can't, in my opinion, underwrite a—allocate a proportion of the capital and surplus to any state unless you would, by the same token, limit your liabilities in that state to the same proportion.

Q. What relation in any direct way does the amount for which you are capitalized have to the return which properly ought to be derived from the volume of business done in that particular state, as distinguished from other states?

A. I don't see any relation.

Q. What, in your judgment, is a fair and reasonable amount of profit to be derived by a company engaged in the line of business in which your company is engaged, upon the amount of the earned premiums derived from the particular state?

A. Why, considering the nature of the business, I don't think 10 per cent profit would be unreasonable.

The Referee: 10 per cent on what?

A. On the earned premiums.

Mr. Polonie:

Q. And what would you suppose, if you derived 10 per cent on the earned premiums derived from the State of [fol. 1968] Missouri, what would you propose to do with that 10 per cent so derived, if you derived it for your company—when you derived it, what would you immediately undertake? To divide it among your stockholders?

A. No. It has never been the policy to pay out all the profits. I think part of it should be paid out as profit and part retained in surplus for the expansion of the business.

Q. Does that addition to surplus, if so made, operate as additional security to policyholders holding policies of insurance with the company?

A. Yes, sir.

Q. What effect does such an addition to surplus have, in your judgment, good or bad, so far as the public, the insuring public is concerned—forgetting now for the moment

any other gain or advantage that might come to your stockholders?

A. Why, it furnishes greater security for the indemnity we sell.

Q. What does the term "conflagration reserve" or "conflagration charge" in your business, as the term is there commonly used, mean or signify?

A. Will you repeat that question?

(Question read by the reporter.)

A. Well, it is a reserve for unusually large losses in congested districts.

Q. And is that—are you familiar with the definition of a conflagration as so used by the Insurance Commissioners Convention some years ago?

A. It is a fire involving values of more than 1 million dollars.

[fol. 1969] Q. Do you use the term "conflagration" as you used it a moment ago, do you use that as the definition, or do you have a different definition?

A. No, that is the definition.

Q. What amount or rate upon the earned premium was there ascertained or fixed on as the amount proper to consider for conflagrations?

A. I think a compromise was arrived at at three per cent.

Q. Is that charge for conflagrations included or excluded from the ten per cent that you mentioned a few moments ago as the profit you sought to derive?

A. Included.

Q. Do you in the conduct of your business separate and segregate the amount so sought to be derived for conflagrations so as to keep it in a separate item and element on your books and records?

A. We have never done so.

Q. Is it an integral part—a provision for conflagrations—an integral part of the accumulations which you have in your surplus?

A. Yes, that is where it belongs.

Q. And if you were undertaking to separate and set aside any part of your surplus to meet such charges it could be done if you saw fit, could it not?

A. Yes.

Q. Do you know, as a matter of fact, whether that was done, at least for some time, by some companies?

A. I know of one company that carries a separate conflagration reserve. I can't say what others.

Q. Your company, however, does not do it as a separation?

A. We never have.

[fol. 1970] Q. Why do you mention ten per cent as the amount which you think proper to derive by way of profit, inclusive of the conflagration charge, rather than five per cent or twenty per cent or some other percentage? What leads you to that figure?

A. Why, that is a conservative figure. I think the average merchant usually figures on a ten per cent profit, and some of them make more or less, but that is rather a standard, and certainly this business of ours is particularly hazardous and we should not be asked to take less. Ought to shoot at less, anyway.

Q. Now, is it your experience that with a calculation on the basis of producing a ten per cent profit upon the earned premium figure that the rates when applied in practice and in fact produce the estimated or calculated amount—when you come to apply your theory, do you produce the 10 per cent, in fact?

A. We have not, no.

Q. Is there any method of calculation by which it would be possible of ascertainment in advance of the volume of business secured and the proportions of it which would be term business and annual business? Can that be ascertained and fixed for the companies at large with any certainty?

A. No, sir.

Q. Do you have a necessary variation in the amount derived, depending upon the rise and fall of the volume of business, and the proportion of one class of business, that one class of business be as to the other?

A. Yes, sir.

Q. Do those proportions, within the business, of the classes of business written, remain fixed, or do they vary [fol. 1971] from time to time?

A. They vary considerably.

Q. In the last twenty-five years the automobile insurance, for example, has it come into being with the automobile, has it not?

A. Yes, sir.

Q. And that business has, during that—since the invention of the automobile—has developed with a gradual growth to the present time?

A. Yes, sir.

Q. And is it changing or shifting from time to time now?

A. It is growing all the time.

Q. Has the business of fire insurance, insuring against the hazards of fire, has that, by the character of buildings and the character of fire fighting appliances and the methods of fire prevention and resistance, has that changed the calculations and the classifications into which that branch of your business runs?

A. Yes, sir.

Q. About how old a thing is the so-called fireproof building?

A. I couldn't say.

Q. Well, it is within your memory anyway?

A. Yes.

Q. Has the development of automatic installations in structures been a matter of comparatively recent growth?

A. Yes.

Q. And very concisely, please, what is the character of a so-called sprinklered building, and what do you mean by the term "sprinklered building"?

A. A building equipped with a sprinkler device—pipes hung along the ceiling at standard intervals with fusible outlets that will melt when heat is applied and distribute water over a certain radius.

[fol. 1972] Q. And that is designed to operate without the intervention or necessity of intervention of human agencies at the time of the fire?

A. Yes, automatically.

The Referee: All of those things tend to diminish the hazards of the business?

A. Yes, sir. They tend to catch a fire in its incipiency and keep it from spreading.

Mr. Folonie:

Q. Now, is there any difference between the rate of charge, between a sprinklered and *and* un-sprinklered building of the same size and character and having the same characteristics and same materials, one sprinklered and one un-sprinklered? Is there a difference in the charge on those?

A. Yes. The sprinklered is very much less.

Q. Are you familiar with the method of sprinkler companies in installing sprinkler equipment and paying themselves for the sprinkler equipment out of the savings on insurance?

A. Yes, sir.

Q. Is that a common practice?

A. Yes, sir, I think it is.

Q. Now, when you do your business you have said that in general you do not do a credit business and you receive your premiums in advance.

A. Yes.

Q. When you write a policy for one year you receive a one year premium for that policy, do you?

A. Yes, sir.

Q. Now, when a policy on the same identical property and same identical circumstances is written for a term say of five years, when that same risk is written for the [fol. 1973] term of five years instead of one, what charge is made upon that five year policy written in the same insuring amount, as compared with the policy written for one year?

A. Four annual premiums are charged for the five year term.

Q. In your opinion, does the reduction of the premium by the payment of four years premium for the payment of five years insurance, does that reasonably compensate a holder for his anticipation of payment and prepayment and loss of the use of his money?

A. Yes, think that is a liberal discount.

Q. In the making of varying rates depending upon the term for which the insurance is taken, is the fact that the insured prepays and thereby loses the use of his money for that period taken into account in the theory of applying those varying rates for different terms?

A. I don't think so. I am not familiar with that method of rating.

Q. When a policyholder, instead of taking this policy for one year, takes it for 30 or 60 days, is he charged the same pro rata premium as though he took it for a year, or is there a different rate applied in that case?

A. He is charged short rate of the year.

Q. In other words, a larger amount than the proportionate term for which he takes it?

A. Yes, sir.

Q. And the proportionate term is taken and treated as the basic term from which the others grow, up and down, depending upon the time for which the policy runs?

A. Yes, that is true.

[fol. 1973a] Q. To whom does the unearned part of the premium which has been paid in by the policyholder and retained in the possession of the insurance company, namely the amount which is reserved for the unexpired part of the policy, to whom does that unearned premium belong?

A. Belongs to the company.

Q. And in your judgment would it be proper to, in the making of a rate on policies of fire insurance, to compute an interest or earning on that portion of the premium and credit it to the policy as an allowance to the policyholder, in addition to these discounts you have mentioned on his term policies?

A. That would not be a practical proposition nor a fair proposition, as far as I can see.

Q. Now, what is impracticable about undertaking to do it?

A. Well, in the first place——

The Referee (interrupting): Pardon me. Now if I understand you Mr. Folonie, you are speaking about the earnings on the unearned premium fund?

Mr. Folonie: That is correct.

The Witness: Proceed.

Mr. Folonie:

Q. What is impracticable about making a computation of that—passing by the question of its fairness or unfairness for the time being? Start with the amount of the reserve

that is set up on your books and in your annual statement as the amount reserved for unearned premiums, and how much of that—I think you said 40 per cent of that came out of surplus and 60 per cent came from current premiums. Thus far, then, it is capable of finding how much of it comes [fol. 1973b] out of current premium writings, roughly, is it not?

A. Yes. That would have to be determined, and as I said before, it would be difficult to trace the source of these investments or the earnings on any one and then to apportion or pro rate the earnings on the unearned premium reserve to each policyholder. It would be that, even if the policyholder would receive it, he would only receive that portion which is set up from the premiums paid in, and it would be impracticable to calculate that. It would be a very difficult matter and a very expensive matter to keep that calculation.

Q. How much of the figure you set up as an unearned premium reserve, how much of that is in invested form and how much is represented by your uninvested assets?

A. That we couldn't tell. We can't trace those funds at all.

Q. Of course, part of your assets you have already mentioned are in the form of agency balances, which naturally are uninvested.

A. Yes.

Q. Do the companies in general, including your own, have assets are securities on special deposit.

A. Yes, sir.

Q. What do you mean by an unadmitted asset?

A. So far as my company is concerned, the unadmitted assets are securities on special deposit.

Q. What do you mean by that?

A. We are required in Canada to put up a special deposit of securities with the receiver general. In Virginia we put up a special deposit, a percentage or apportionment [fol. 1974] to our amount of capital. In Georgia and South Carolina and New Mexico the same requirement prevails. In other states, Michigan and Louisiana—Oregon and Louisiana and Texas and several other states, they have discontinued that requirement and allowed us to put up a surety bond. That is what I mean by a special deposit,

and those are treated in our statement blanks as non-admitted assets.

Q. In other words, you must take a part of your physical assets and physically deposit it with some officer designated by those jurisdictions?

A. Yes, sir.

Q. Then when you come to make reports to the State of Missouri as to your assets and liabilities you are not permitted to treat those as assets?

A. No.

Q. You are required to eliminate them?

A. Simply report those as unadmitted assets.

Q. And therefore you have in fact assets which insofar as your dealings with the State of Missouri are concerned, are treated as though they did not exist?

A. Yes, sir.

The Referee: Mr. Chapman, suppose you had a company with a capital, say, of $100,000—I am using this for illustrative purposes only—normally that capital would be invested, I take it.

A. Yes.

The Referee: Suppose it had a surplus of $100,000, normally that surplus also would be invested, would it not?

A. Yes, sir.

The Referee: Suppose your unearned premiums in that same company amounted also to $100,000. That would be [fol. 1975] a part of the general fund out of which your investments had been made and not kept separate, or distinct at all, but they would all bear a certain relation to one another, that is, unearned premium $100,000, surplus $100,000, capital $100,000, and all invested?

A. Yes, sir.

The Referee: Of course, there would be a reserve for cash, of course. Would there be any particular difficulty in figuring the amount of the earnings on the investments and apportioning it in the amount derived from these various funds?

A. Yes, that unearned premium reserve of $100,000, part of that would be taken from the surplus to make good the reserve.

The Referee: Do you know what part? Do you know?

A. Approximately 40 per cent, as experiences show.

The Referee: I was just thinking of the mathematical difficulties presented, if any, of doing that thing.

A. Yes. Well, the reserve of $100,000 in that case would have been made up out of the surplus account. The surplus would have been reduced from more than $100,000 down to $100,000 in taking care of that business as it was written.

The Referee: All those factors are determinable with reasonable accuracy, however, are they not?

A. Yes, sir.

Mr. Fclonie:

Q. Now, when you come to the question of what proportion, or when you come to the question of your uninvested [fol. 1976] assets, agency balances form a large part of the uninvested asset item of your company's business, I assume?

A. Yes, sir.

Q. Then you have a cash balance for doing business which you carry as a bank balance, I suppose?

A. Yes, sir.

Q. And that varies from time to time, I assume, the amount of cash on hand, like any other business, goes up and down from time to time?

A. Yes, sir.

Q. Is there any method by which you can calculate with any kind of reasonable certainty what proportion of the current premium writings are—I am assuming you can determine what proportion of your general assets come from current writings as distinguished from accretions—now, how can you get at the question of what proportion of the premium receipts were invested and uninvested form?

A. You mean taking the premium receipts for one year?

Q. I am taking—having in mind particularly now the amount of the unearned premiums which existed at a certain date, we will say December 31, 1922. You had unearned premiums set up as a definite figure, didn't you, in your statement?

A. Yes.

Q. Are you able to say how much your unearned premiums are for a period, say for the year 1922—now, how are you going to calculate what they were during the year?

You knew what they were December 31st, the previous year, didn't you?

A. Yes.

Q. And you know what they are December 31st, at the end of the year?

A. Yes.

[fol. 1977] Q. Now, if you take the average between those two figures, does that give you some kind of an approximate figure as to your average unearned premium figure during the year, do you think?

A. I don't know whether that would or not. I have never considered.

Q. Does your business run along more or less steadily right along so that one day's business and one week's business and one month's business will run along the same, or does it go up and down during the year?

A. Oh, it varies from month to month and week to week.

Q. And day to day?

A. Day to day, of course.

Q. Well, assuming now that your charge against the unearned premiums all the agency balances and all of your cash, in other words you took all your uninvested assets and treated those as coming from current writings, you would not have very much left in your unearned premium figure if you would charge all your uninvested assets against it to arrive at a balance, would you?

A. No.

Q. How do your commissions for your business run, between what limits—the smallest commission and the largest commission you pay?

A. The largest commission is 35 per cent and the smallest commission is 15 per cent.

Q. And what would you say was about the average commission on your whole business?

A. Our average is about 22 and a fraction.

Q. In your judgment, is that—having in consideration the method in which your business is conducted, by which [fol. 1978] I mean the agency plan of doing business, assuming the propriety of that plan of doing business and considering the competition or lack of it which may exist in your company and other companies in the acquisition of business—on your judgment is the commission rate which

is paid a reasonably fair cost for acquisition of the business—handling of it?

A. Yes, sir, I think so.

Q. Now, what is the general expense of your company altogether, inclusive of agency commissions—I don't assume you have the figures with you at this moment. Approximately what will it run?

A. About 43 per cent.

Q. Do you, as an executive and president of your company, do you undertake to the best of your ability to keep down the expense of the conduct of your business?

A. Yes, sir.

Q. Take the various elements that enter into it, what is to keep you from cutting down the commissions of your agent so as to cut down that 22 per cent average commission you pay down to, say 16 or 18 per cent on the average? Why don't you just go ahead and do that?

A. Competition of other companies keeps me from doing it. I couldn't get any business from an agent at 15 or 16 per cent if some other company were willing to pay him 25 or 30.

Q. You mean he would quit you and go to somebody else?

A. Yes, he just wouldn't give us any business.

[fol. 1979] Q. In general where you have agents are your agents as a rule your exclusive agents or do they have different companies in their offices?

A. We have no exclusive agents. They represent maybe two to forty companies.

Q. What control do you have over that element in your expense, consisting of taxes, Federal Governmental and municipal taxes?

A. We have no control.

Q. Is that a considerable item, the element of your expenses of your business?

A. Yes, sir.

Q. You have in mind now about how much your tax item will run in your business, about what percentage it will run of your——

A. (Interrupting.) No, I think it is about 6 per cent.

Q. Of what?

A. Of our premiums; earned premiums.

Q. I was getting at whether you meant 6 per cent on that or 6 per cent of your expenses.

A. Premiums.

Q. 6 per cent of your premiums, you are talking about?

A. Yes. We are talking about the percentage of commissions to premiums, aren't we?

Q. Yes. I just wanted to clarify it so there will be no misunderstanding.

The Referee: You don't mean agents' commissions to business?

Mr. Folonie: He said when he mentioned his percentage of commissions as 22 he meant 22 per cent of the premiums. Now he is taking the taxes and relating them to the same figure, namely, the premiums.

[fol. 1980] The Referee: Are you speaking of premiums or earned premiums?

A. Of earned premiums.

The Referee: Your taxes, then, run about 6 per cent of your earned premiums?

A. That is approximately. I don't know the exact figure.

Mr. Folonie:

Q. If, therefore, from the 10 per cent which you said that you were—you thought was a proper charge by way of profit to your company on the earned premiums, you eliminate 3 per cent as a charge for conflagrations, you would have left 7 per cent of those earned premiums for your profit of your company?

A. Yes, sir.

Q. Which then would be 1 point more than the amount of taxes you pay?

A. Yes, sir.

The Referee: Do you mean out of that 7 per cent you would pay a 6 per cent taxe?

A. No.

Mr. Folonie: No, I was seeking to make a comparison between their profit item and their tax item, if the court please, that is all.

The Referee: Yes. Of course, in figuring your net profits you have made deductions for taxes?

A. Yes. That was the way I understood the question, the relation between the rate of tax and the rate of profit.

Mr. Folonie: Have you made any special study or given any special thought to the question of whether 3 per cent to care for conflagration is adequate or inadequate?

[fol. 1981] A. No, I have not. I have not given the matter any particular or careful thought.

Q. Has your company had any real estate mortgages or securities of that kind in the course of your business while you have been president?

A. It has one real estate mortgage.

Q. What was that on?

A. It was on some property just outside of the city limits belonging to the Evans & Howard Fire Brick Company;; the original loan was $35,000 and now $15,000; it has been reduced.

Q. Did you have any interest in any buildings in the St. Louis down town district in any way?

A. Not since my term of office.

Q. Did you before that?

A. The company formerly owned a building at the corner of Boardway and Locust Streets.

Q. Very briefly, how did it come to acquire that building?

A. I don't know.

Q. Does it still own it?

A. No, it sold it more than twenty years ago.

Q. With the exception of that real estate holding at one time, and the mortgage you have mentioned, virtually all your securities you said were bonds?

A. Bonds.

Q. And they are in large part listed bonds, are they?

A. The greatest proportion is listed bonds.

Q. Does your company have at this time any unadmitted assets?

A. Yes sir, the deposits with—that I have mentioned.

[fol. 1982] Q. And do you get any returns or interest on those non-admitted assets?

A. Yes, sir.

Q. Do you show the interest or the earnings or the returns on those non-admitted assets in your reports to the State of Missouri?

A. I am not certain whether those returns are segregated or just included in the general interest returns.

Q. Well, for your information they are segregated and set up separately as non-admitted assets, so far as the

assets themselves are concerned. Do you recall now whether you show the interest or income from those at all in your statement?

A. Oh, yes, all the interest income is included.

Q. You think—you do receive interest and income from those non-admitted assets as well as your admitted assets, do you?

A. Yes, sir.

Mr. Folonie: You may cross examine.

The Referee: To what hour shall we adjourn, gentlemen?

(Discussion ensues.)

The Referee: We will adjourn to 1:30 o'clock today, to meet at this place at 1:30.

(Whereupon an adjournment was taken until 1:30 o'clock in the afternoon of the same day, the same being Monday, the 19th day of November, A. D. 1923, at which time parties reconvened at the same place and the following proceedings were had:)

[fol. 1983] B. G. Chapman, recalled as a witness on behalf of the plaintiff for cross-examination, was examined and testified as follows:

Cross-examination by Mr. Barker:

Q. Mr. Chapman, conflagrations are not in any sense injurious to the fire insurance business, are they?

A. We have always thought so, sir.

Q. Well don't they in fact stimulate business and you make more money afterwards than you did before?

A. I don't think that has been the experience.

Q. After the San Francisco conflagration the rates were raised horizontally 10 or 15 per cent throughout the United States, weren't they?

A. I don't recall. I was not in the business at that time.

Q. And that increase to pay for the conflagration of San Francisco has been carried ever since that time, and this is 1923—isn't it?

A. That I don't know.

Q. Now, if the 15 per cent increase was added in 1906 and carried until 1923, that would pay for forty conflagrations like that, wouldn't it?

A. If it has been carried I imagine it would.

Q. Well, then, you know Mr. Edwin Milligan, president of the Phœnix of Hartford Fire Insurance Company, don't you?

A. Yes, sir.

Q. He is an authority in the insurance world?

Mr. Folonie: We object to assuming there is such a thing as an authority in the insurance business, if the court please.

[fol. 1984] The Referee: Tentatively overruled, in order that the court may first find out if possible whether there is or not.

Mr. Barker:

Q. Is he considered an intelligent insurance president?

A. I think so.

Q. Are you familiar with this testimony which he gave before the New York Commission in 1910, as follows—in the printed report of the Insurance Commissioner of New Work, and which reads as follows: "Speaking for the companies, for the fire insurance companies, I should say that the reduction of the fire waste would not be a profitable thing. I think, Mr. Chairman, that as a business fire insurance is conducted by companies like the one I represent with more satisfaction and with larger profits in the years when fires are plenty. A good number of fires means a good premium account." Now, do you agree with that statement?

Mr. Folonie: We object to the assumption Mr. Milligan said any such thing.

Mr. Barker: Mr. Milligan did say it, and the insurance report so shows, and I am reading it word for word.

Mr. Leahy: Don't make any difference whether he agrees or does not agree.

Mr. Folonie: First of all, he is reading from something we don't know anything about.

Mr. Barker: I have given you the page and citation.

Mr. Folonie: We don't care. It isn't competent to determine the issues in this case.

[fol. 1985] The Referee: The question assumes certain testimony to have been given and by a certain witness. For whether such testimony was given by a certain witness the purpose announced by counsel it is immaterial whether such testimony was given by a certain witness or not. The gist of the question now before the court is whether or not this witness holds certain theories or beliefs with respect to the fire insurance business. The question might easily be reframed to avoid the objection which has been urged against it.

Mr. Leahy: We object, Your Honor, to assuming—to reading into this record——

The Referee (interrupting): I have sustained you so far.

Mr. Folonie: May change his mind, Judge; better keep still.

Mr. Barker:

Q. Do you agree with that statement, if made?

A. I do not.

Mr. Barker: That is all I want. Now, you know Mr. Henry Evans, the chairman of the board of the Continental Fire Insurance Company?

A. I have never met him.

Q. Do you know of him?

A. I know of him.

Q. Is he a well recognized man in the fire insurance world, America?

A. I should say so.

Q. Do you agree with this statement made before the New York Insurance Commissioner at page 2890?

Mr. Leahy: We object to that, Your Honor, even to him asking that question, in the teeth of your ruling on the preceding question. I think——

[fol. 1986] The Referee: I think that is an unnecessary part of the question. If you want to ask him about certain theories about which you wish to interrogate him the question may be asked in any form you choose, but as the question has progressed it makes a record which the facts do not so far justify. Sustain.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker: Well, I will make an offer, then. The only way I can preserve it, I guess, is to make an offer. I make an offer to ask this witness the following question: Do you agree with the statement of Henry Evans, president and now chairman of the board of directors of the Continental Fire Insurance Company of New York, testifying before the New York Insurance Commission in 1910 at page 2890, insurance commissioner's report of the State of New York, in the year 1910, in which he said: "I don't care anything about a $2,500,000 or a 3 million dollar fire. Just as soon have it as not. It would put so much business on my books and put rates so high I would make it up." Now, I desire to ask the witness in the first place if he read that statement of Henry Evans, and in the second place whether or not he agrees to it.

Mr. Hogsett: To which we object, for all the reasons heretofore asserted, and that it makes no difference whether he read it or whether he agrees to it.

[fol. 1987] Mr. Folonie: And specifically we object to the form of the question in assuming that Mr. Evans so stated, instead of stating it hypothetically or suppositiously.

The Referee: Now, read the whole question, Mr. Blume.

(Question read by the reporter.)

The Referee: Objection sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, as an insurance man, Mr. Chapman, you keep up in a general way with the insurance journals and the reports of the different departments in the different states of the Union, do you?

A. Yes, sir.

Q. Do you remember this report as published by the Kentucky State Insurance Board—published document of April 29, 1914, as found in the reports of the Kentucky

Insurance Commissioner of that year, in which this statement is made: "A very prolific cause of loss occurred in this state, as admitted by the companies, due to over-insurance. To correct this evil so far as possible the state insurance board is given the right to inquire into the question of insurance as to its property, thus insofar as possible preventing fraud loss. Companies, however, because of their antipathy to state regulation, seriously object to this as well as all other provisions of the law. They seemingly little care how great their losses may be as long as state supervision is prevented and the making of rates charged [fol. 1988] for insurance left entirely in their hands." Now did you read that statement, in the first place?

Mr. Folonie: Objected to, whether——

The Referee (interrupting): You may answer that question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I did not.

Mr. Barker:

Q. Were you doing business in Kentucky in 1914?

A. Yes, sir.

Q. Been doing business there ever since?

A. Yes, sir.

Q. You keep posted on the affairs of the Kentucky Insurance Department?

A. In a general way, yes, sir.

Q. You have this report in your office, have you not?

A. I assume so.

Q. You know you have, don't you?

A. No, sir.

Q. Don't you have reports of the Kentucky Fire Insurance Department in your office now?

A. I don't recall whether you—whether we do or not.

Q. How could you find out?

A. By inquiring at my office, I suppose.

Q. And if you have that report the chances are, being in business in that state, you read it, did you not?

A. Not necessarily, sir, because I can't pretend to read all reports of the various Insurance Departments.

Q. A matter affecting as vital a subject as this, you tell the commissioner you wouldn't read it?

[fol. 1989] Mr. Leahy: Wait a minute. There is nothing vital in that statement, nothing that anyone would seriously contemplate reading.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. You know that in 1913 Collier's Weekly made an investigation as to the question of over-insurance in the United States and the failure of the companies to make proper inspection? Did you know that?

A. I know that they carried a number of articles about that.

Q. And you read those articles, did you not?

A. Yes.

Q. Did you read this article published on February 8, 1913: "At the very lowest estimate incendiarism either active or passive is responsible for one-half of our fire losses." Did you read that statement?

Mr. Leahy: We object to that, because that was in the World's Work, I think.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Did you read that statement?

A. I don't recall that I did.

Q. You might have?

A. I might have.

Q. Was it true or false?

A. I think it is false.

[fol. 1990] Q. You have the report of the New York Insurance Commission in your office, I assume?

A. Yes, sir.

Q. Doing business in New York in 1910, were you?

A. Yes, sir.

Q. And ever since then?

A. Considerable portion.

Q. Considerable part of your business written in New York?

A. Yes, sir.

Q. Do you read their reports which deal with questions which you deem vital to your company?

A. I don't read the reports.

Q. If your attention is called to some article which you deem vital to your company would you read it?

A. Yes, sir.

Q. Did you read this statement, as published in their report in 1910, at page 119: "Against that you have a certainty the fire loss could be at least cut in two; that there could be a saving not only of millions of dollars a year in property now destroyed but nearly as much more insurance expense—certainly hundreds, perhaps thousands, of lives saved and a world of worry and suffering." Did you read that?

Mr. Leahy: Object to that, a mere conclusion and not vital.

Mr. Folonie: We object to it that without the context it is unintelligible.

The Referee: The question is whether or not the witness read a given article. He may answer. Overruled.

[fol. 1991] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I did not.

Mr. Barker:

Q. Did not. Would you express an opinion as to whether that is a fair or unfair statement?

Mr. Leahy: We object to that, Your Honor; can't be any opinion predicated upon that conglomeration of words.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. I say, would you venture an opinion?

A. Will you read that question?

(Question read by the reporter.)

Mr. Barker: I will read the statement over again: "Against that we have a certainty that the fire loss could be at least cut in two; that there could be not only a saving of $100,000,000 a year in property now destroyed and nearly as much more insurance expense, and certainly hundreds, perhaps thousands of lives saved, and a world of worry and suffering." I will explain that it is dealing with the question of over-insurance.

Mr. Leahy: What is it against?

The Witness: Against what?

The Referee: The question is, as I understand it, whether or not that statement in your judgment is substantially true?

A. In my judgment it is not true.

[fol. 1992] Mr. Barker:

Q. Very well. Now, do you have in your office the insurance reports of the State of Kansas?

A. I don't remember.

Q. Well, you probably do?

A. We don't get the reports of all the states, sir.

Q. Well, but you perhaps get them from Kansas, don't you?

A. I don't know.

Q. You might?

A. We may.

Q. Were you doing business in Kansas in 1910?

A. Yes, sir.

Q. And ever since?

A. Yes, sir.

Q. If your attention was called to some statement in the report of Kansas which affected your company you would naturally see it?

A. Yes, sir.

Q. Did you read this statement in the report of the insurance commissioner of Kansas as published in his printed report in the year 1910, page 68: "The question of over-insurance is a subject that should receive attention as much as any other thing that we have before us. I believe that if we could eliminate over-insurance that the rates in Kansas could be reduced 50 per cent, in my honest judgment." Did you read that statement?

A. I did not.

Q. Would you venture an opinion as to whether that is substantially correct or not?

A. I should say it was not correct.

Q. Are you bothered much about the question of over-insurance, Mr. Chapman?

A. No, sir.

Q. Your company makes no inspection of any kind, does it?

A. Yes, sir.

[fol. 1993] Q. Makes substantial inspection of all risks?

A. Practically all, yes, sir.

Q. What is that?

A. Practically all, yes, sir.

Q. Are you familiar with the inspections as made by mutual companies and reciprocal companies, for instance?

A. No, sir.

Q. You are not?

A. No, sir.

Q. Do you have—do you ever hear of an insurance business known as a mutual business?

A. Yes, sir.

Q. You have heard of mutuals?

A. Yes, sir.

Q. You understand the plan on which they operate?

A. I think I do.

Q. Have you heard of reciprocal companies?

A. Yes, sir.

Q. And understand the plan on which they operate?

A. I think I do, yes, sir.

Q. Ever had occasion to investigate their method of inspection?

A. No, sir.

Q. You don't know, then, that they employ their agents on a salaried basis to visit each risk and carefully inspect it and make a report on it?

Mr. Leahy: Your Honor, he has stated he didn't know, and now what is the purpose of making this statement of what they do do? It is not before this court.

Mr. Barker: I would have been through now if you had let me alone.

Mr. Leahy: Yes, but it is improper.

The Referee: Finish the question.

Mr. Barker: Well, withdraw it. If Mr. Leahy don't want it I withdraw it.

[fol. 1994] Q. You are not familiar then, with the method of inspection in these other companies?

A. No.

Q. Don't you think as president of this big company you ought to familiarize yourself more with the method of your competitors?

Mr. Leahy: Object to that.

Mr. Folonie: Oh, let him answer it.

A. That may be one of my sins of omission. I try to keep up with my own method and the general method of insurance companies, but I must confess I am not familiar with the practices of mutuals and reciprocals.

Mr. Barker:

Q. Now, in the last few years there has been great agitation about reduced fire losses, has there not?

A. Many years, yes, sir.

Q. You have been familiar with that?

A. Yes, sir.

Q. Your company participates to the extent of spending vast sums of money in the effort, don't you?

A. Yes, sir.

Q. You belong to a great many bureaus organized for that purpose?

A. Yes, sir.

Q. You contribute to fire prevention in every way, don't you?

A. Yes, sir.

Q. I believe you have, outside of Missouri, a fire prevention day?

A. Yes, sir.

Q. Now, fireproof buildings are more prevalent today than they were a good many years ago?

A. Yes, sir.

Q. Fire fighting apparatus is much better than it was?

A. Yes, sir.

[fol. 1995] Q. And everything is being done to reduce the fire loss, isn't it?

A. Yes, sir.

Q. And yet in the face of that insurance rates have risen steadily, have they not?

A. Our records don't so show.

Q. Losses in excess—fire losses are greater in the face of these extra precautions, are they not?

A. They are greater, yes, sir.

Q. Do you not know that in 1913—in 1912 the fire loss per capita in the United States was $2.67? That is true, is it?

A. I don't recall the figures.

Q. Do you pay any attention to the insurance business at all, Mr. Chapman?

A. Yes, sir.

Q. And you don't know anything about the per capita loss of the United States?

A. I don't charge myself with those figures.

Q. Well, but it is in your company. Who does in your company?

A. I don't know that anybody does.

Q. Do you think it is a vital thing for an insurance president to know anything at all about fire losses in the United States?

A. Yes, sir.

Q. Don't you know that in 1923 the fire losses had jumped to $5 per capita in the United States?

A. Yes, sir, approximately that.

Q. How do you explain to the Commissioner that if you have been careful in the risks which insurance companies write, careful in the fire preventions which are used, contributing all of this money for that purpose, that the per capita has increased from 1912, $2.67 per capita, to in 1923 $5 per capita? Can you explain that?

[fol. 1996] A. Explain it by saying it is due to the existence of a severe moral hazard.

Q. Then you figure the moral hazard in the writing of insurance?

A. Yes, sir.

Q. What provision do you make to protect yourself against the moral hazard?

A. Every provision in our power.

Q. If a person telephones in to your office and wants a fire policy do you look him up before you write him?

A. Exactly.

Q. Who looks him up?

A. The man in charge of that duty. He doesn't telephone in to our office, though. The business comes to us through agents.

Q. How do you know what the agent does about it?

A. We only know on his report. We ask for a special examiner report and if we have the slightest doubt about the risk we have it inspected.

Q. If you have no doubt it is not inspected?

A. No, sir.

Q. And those that you don't inspect are where you get the loss, is it?

A. Not necessarily.

Q. Not necessarily. Now, you know that in 1923 the per capita loss in England was only 72 cents as against $5 in the United States?

A. In 1923?

Q. Yes, sir.

A. I haven't seen the 1923 figure.

Q. Well, it is less than a dollar, you know that, don't you?

A. Yes, sir.

Q. So that with all this protection which you have attempted to give, all the money which you spend for fire prevention, fire losses mount day by day, do they not?

A. Yes, sir.

[fol. 1997] Q. Now, isn't that purely and exclusively because you make no effort to investigate the risk at all?

A. No, sir.

Q. Do you mean to tell me, Mr. Chapman, that if I go to an insurance company in Kansas City to have my property insured that they place the value on it that I place on it?

A. I do.

Q. You accept it, don't you?

A. We would accept it or not, as the case may be.

Q. You accept 99 per cent without question, don't you?

A. I don't know what the percentage is. We must assume that the man who owns the property is the best judge of its value. If we have any doubt as to his estimate of value, we don't insure it for that man.

Q. If I told you a horse I wanted insured was worth 4 hundred dollars you would pay me 4 hundred dollars on the theory I ought to know what it is worth?

A. No, I doubt that.

Q. Certainly you do. You would go and look it over.

Mr. Folonie: That is what you get for making it personal, General.

A. Yes, sir.

Mr. Barker:

Q. But if I would ask for a policy of insurance and say it was worth $400 you wouldn't question it?

A. The agent would be the first one to question it.

Q. Well, would he question it?

A. Yes, sir.

Q. How would he question it?

A. The agent would be presumed to know something [fol. 1998] about you and your circumstances and if you asked him for a $500 policy it would be reasonable for him to assume that you had that amount of value, if he knew you and knew where you lived. There would be nothing to prevent you from going to some other agent and getting another $500.

Q. On the same property?

A. Yes.

Q. And could you deduct it?

A. I don't know.

Q. If I would go to a third company and get $500 could you deduct it?

A. I don't know.

Q. Don't you know your companies have a rider on there, "Have you any insurance and if so what company"? Haven't you got that rider on your policy?

A. Not on the policy.

Q. Well, is it in the policy?

A. No, sir.

Q. In your application?

A. The business is not written on application.

Q. Is it in any writing that you know of?

A. No, sir.

Q. Do you know whether other companies have that rider or that provision in their policy?

A. No, I don't know.

Q. Now, then, you don't have, I think you told Mr. Folonie, a conflagration reserve set aside and maintained as such?

A. No, sir.

Q. Now, you think 10 per cent on earned premiums is a proper profit?

A. Yes, sir.

Q. The earned premiums, of course, are a great deal less than the written premiums?

A. They are in a year when written premiums increase.

[fol. 1999] Q. On an ascending scale of business, you mean?

A. Yes.

Q. And each year in the insurance field is an ascending scale of business, is it not?

A. It hasn't been so always with us.

Q. Not always?

A. No, sir.

Q. The period in question, 1917 to '21, inclusive, do you know whether that was an ascending scale of business or not?

A. It was an ascending scale of business until the middle of 1920.

Q. You think 1921 was less than 1917?

A. It was for us.

Q. It was for you?

A. Yes, sir.

Q. Now, then, take a company with a capital stock, as an illustration, of $100,000; and that company writes a million dollars' worth of business—or, say that company has a million dollars' worth of premiums earned, 10 per cent on that would be $100,000?

A. Yes, sir.

Q. That would be a fair profit?

A. Yes, sir.

Q. That would be 100 per cent on the capital. Would that still be fair or unfair?

A. I think it would be fair.

Q. 100 per cent profit is a fair profit, you think?

A. Yes, sir.

Q. Now, then, Mr. Chapman, are you an officer or director in any bank or other corporation?

A. No, sir.

Q. As a business man you are familiar with the ordinary operation of all kinds of corporations, I take it?

A. I have some information about them.

[fol. 3000] Q. Now, let us assume, for instance, you are president of two corporations, the American Central, with a capital stock of a million dollars; a telephone company with a capital stock of one million dollars, both incorporated in Missouri. Now, let us assume in your million dollar fire company, American Central, you write ten million dollars' worth of business. Let us assume that you make a 10 per cent profit on that volume of business. Now, let us assume that on your telephone company million dollar capital you had a volume of business of ten million dollars. On that you make 10 per cent, on that volume of business. You would figure the profit or loss against each of the corporations just the same, would you not?

A. Against each corporation?

Q. Yes.

A. Yes.

Q. There is no difference in figuring the profits of the telephone corporation and a fire corporation?

A. Well, I should think there is.

Q. Well, what is it?

A. The telephone corporation is a public utility and their profits are figured on a fixed valuation. That is my understanding of the method adopted by the public service commissions.

Q. Do you recognize the fact that insurance is impressed with a public trust—the same as a telephone company?

Mr. Folonie: We object to that as calling for a conclusion of law.

The Referee: Overruled.

[fol. 2001] (To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I wouldn't say that it is impressed with the same public trust as a telephone comapny.

Mr. Barker:

Q. But you recognize that it is to some extent, at least, impressed with a public trust, I take it?

Mr. Folonie: Same objection to that.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. It is related to the public interests.

Q. On your fire corporation, million dollar capital, you do a volume of business of 10 million dollars. What is your profit? One million—I mean 10 per cent?

A. 10 per cent.

Q. 10 per cent profit. Now, in your telephone company with a capital stock of one million dollars, you do a ten million dollar business and you have a profit of one million dollars. What is your profit? Still 10 per cent?

A. Profit on the turnover of the business, 10 per cent, yes; I should say so.

Q. Just the same in one as in the other, is it not?

A. Yes, sir.

Q. Now, that one million dollars against that capital represent a profit on each corporation of 100 per cent, would it not?

A. On the capital?

Q. Yes.

A. Yes.

[fol. 2002] Q. And that is the way you would figure it, is it?

A. You would figure your profit on the turnover of the business.

Q. All right, we figured that at one million dollars on a ten million dollar basis.

A. Ten per cent.

Q. Right. Then applied to your capital, what is your profit?

A. Applied to the capital, it would be 100 per cent.

Q. Well, that is profit, isn't it?

A. It bears that relation, yes, sir.

Q. If you are going to settle with your stockholders and distribute it you would pay 100 per cent dividend, wouldn't you?

A. I assume so, on that basis.

Q. That would be the same in the telephone company and the fire company?

A. Yes, sir.

Q. So there isn't any difference in figuring the profit on a fire company and a telephone company, is there, Mr. Chapman? If they are both incorporated, I mean.

A. No, I suppose not, if you figure it that way.

Q. Now, Mr. Chapman, you have a capital of one million dollars, have you?

A. Yes, sir.

Q. Now, on that million dollars, you say that the stockholders paid all of that million, I take it?

A. Paid three million.

Q. Paid three million. What is your stock worth on the market now?

A. I don't know. There has been no trading in the stock lately.

[fol. 2003] Q. Insurance stocks are listed?

A. Ours is not.

Q. Insurance publications have a listing of the value of insurance stocks, don't they?

A. They list a few companies but American Central is not listed.

Q. What is the book value of your stock?

A. I think it is about $220.

Q. $220 a share?

A. Approximately. I don't recall.

Q. Par $50 a share?

A. Yes, sir.

Q. Your company is doing pretty well, isn't it? What is that, 5 for 1?

A. That is the percentage—the capital was reduced to $50 par when the shareholders gave up half of their stock.

Q. That is, 5 for 1 it is worth today; right?

A. Well, that is on the basis of a million capital, regardless of the par value.

Q. And on that basis it is worth 5 for 1?

A. I don't know that I can follow your reasoning there.

Q. I am not giving any reason. I thought you told me it was worth $220 a share, and that its par value was $50 a share, and I am asking you if that makes it 5 for 1.

A. Well, yes, approximately.

Q. And how much surplus have you?

A. About $1,800,000.

Q. Is that $1,800,000 in surplus contributed by the stockholders?

A. Part of it.

Q. How much of it?

A. Well, I don't know how much of that has been contributed by stockholders.

Q. Why don't you know, Mr. Chapman?

A. Because a good deal of that has been earned out of the business.

[fol. 2004] Q. Well, all of it has been earned, hasn't it?

A. No, the stockholders originally contributed both capital and surplus. That surplus was practically wiped out; when we reduced the capital from two million to one, and transferred one million dollars to the surplus account. Since that time there have been accretions to that surplus out of earnings. We have——

Q. You think, then, the earnings only represented about $800,000 of the $1,800,000 surplus?

A. A little over that.

Q. Substantially a million dollars, I take it?

A. Yes, sir.

Q. Now, you told Mr. Folonie this morning that you didn't think the policy holders should have any interest at all in the unearned premium reserve or that that should be

considered by the state in the fixing of a rate. Is that what you mean?

A. Yes, sir.

Q. As the president of a great fire company you know something about life insurance, don't you, Mr. Chapman?

A. Very little.

Q. What is that?

A. Very little.

Q. Do you carry any life insurance policies?

A. Yes, sir.

Q. You had an agent figure with you what they were worth before you took them, did you?

A. Figured on what they would cost me.

Q. And what you would get out of it?

A. Yes.

Q. You participate in some of those policies?

A. Yes.

[fol. 2005] Q. Did the agent explain to you, and don't you know, that life companies allow you, as a policy holder, 3½ per cent on the money which they have invested, and that that is figured as your protection in the rate?

A. I don't know how they figure that 3½ per cent, but mutual companies pay that.

Q. Didn't the agent explain to you and don't you know from your policies that in arriving at a life insurance rate the method of arriving at it is to allow the policy holder 3½ per cent on the money which is invested by the insurance company, which would be likened to your unearned premium reserve? Don't you know that?

A. That is not my understanding of it.

Q. It is not your understanding?

A. No, sir.

Q. Would you explain to me, if it should be true that life insurance companies do allow 3½ per cent to their policy holders, why you couldn't do it in the fire business?

A. I don't see any reason why we should.

Q. Do you see any reason why the life companies should?

A. No.

Q. Now, this money which you collect from the policy holders you collect in advance?

A. Yes.

Q. Do you recognize that is impressed with a trust and that you are holding it for the policyholders?

A. No, I do not recognize that it is impressed with a trust. So long as we are able to pay our losses, the premiums that are paid to us are ours to do as we please with.

Q. Now, who has the primary right to that unearned premium, the company or the policyholder?

A. The loss claimant.

[fol. 2006] Q. What is that?

A. The loss claimant.

Q. The loss claimant?

A. Yes, sir.

Q. Eliminate that, and suppose it should be a question between the policyholder and the company, which would have the primary right?

Mr. Leahy: In the event of cancellation.

A. I don't know that I understand the question.

Mr. Barker:

Q. Well, Mr. Leahy did interrupt you and confuse you a little bit. Who has the primary right to that money, the company or the policyholders?

A. The companies are compelled to pay all returned premium to the policyholder if he cancels it.

Q. Who has the primary right to it, then the company or the policyholder?

A. The Policyholder.

Q. Then it is his, isn't it?

A. It is his if he chooses to take it back and cancel his liability.

Q. He has a right primary over yours, hasn't he?

Mr. Folonie: We object to the assumption that cancellation gives primary rights. That goes in breach of the contract and not in furtherance of it, if the court please.

Mr. Barker: Mr. Folonie again used the word "cancellation" so you will understand it. I didn't ask you anything about it, but Mr. Leahy and he together will get you to understand what they want in a minute.

The Referee: Objection overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2007] Mr. Barker:

Q. You understood I didn't say anything about cancellation, did I?

A. I understood that you did not say anything about it, but that gives the policyholder the primary right only if he cancels it.

Q. Now, then, in case the policyholder claims he wants his money back and you claim you want to hold it, who would prevail? You mean he would prevail?

A. Yes, sir.

Q. And yet you think it is yours and you can do what you please with it, is that right?

A. As long as we are in position to pay it back if he demands it.

Q. Now, experience has taught you that there is about 15 to 20 per cent of cancellations in your company, is that not true?

A. Yes, sir.

Q. Let us say 15 per cent—that is fair, isn't it?

A. I should say nearer 25 per cent.

Q. I asked you a moment ago 15 to 20, and you said yes. Now you want to say 25?

A. I will say 25.

Q. Now, you have figured that 25 per cent out of your unearned premium reserve will of necessity be returned to the policyholder for cancellation, and that is your experience, is it?

A. Yes, sir.

Q. Then why don't you take 75 per cent of that earned premium and treat it as your own, reserving 25 per cent for the cancellations which you know will come?

A. We reserve the amount of unearned premium in accordance with the legal requirement for the payment of unearned premium.

Q. That is only 50 per cent?

A. It is nearer 60.

Q. It is nearer 60?

A. On an average.

[fol. 2008] Q. All right, then; 60 per cent. The only reason, then, you can't set aside 75 per cent of that unearned premium in arriving at a rate and treat it for that purpose is that by law you are required to keep 60 per cent, is that right?

A. We are required to keep 50 per cent on one year policies and graded up to 90; the average is close to 60.

Q. Well, let us take a one year policy. You are required to keep 50 per cent?

A. Yes.

Q. You know you are going to have to return 25 per cent?

A. On an average, yes.

Q. Well, your experience tells you that?

A. Yes.

Q. Then why don't you take 75 per cent of that total premium, leaving 25 per cent for the policyholder in case of cancellation, and figure that in making a rate? Wouldn't that be fair?

A. I don't see how that could be used in figuring a rate.

Q. You couldn't figure the earnings on that, then, to fix a rate?

A. No, because you are not earning all the income on 75 per cent. You have got your losses and expenses to pay.

Q. They will be taken care of along with the general expenses, won't they?

A. Out of that 75 per cent.

Q. In other words, there is no such thing as unearned premium reserve known to the insurance world, is there, Mr. Chapman?

A. Well, it is a so-called unearned premium reserve, that is the name that is given to it, isn't it?

[fol. 2069] Well, that is a misnomer, isn't it?

A. It is a bookkeeping entry.

Q. But not kept in any separate account?

A. No.

Q. All mingled with the general funds of the company.

A. Yes, sir.

Q. Now, you charge about 40 per cent out of every dollar for expenses, do you not?

A. Yes, sir.

Q. Now, eliminating the expenses and eliminating the 25 per cent which you will have to return, as your experience shows you, then you know a definite figure that will belong to you, do you not?

A. Yes, sir.

Q. Now, you know the earnings on that, do you not?

A. We know the earnings on the money invested.

Q. Well, you can figure that at two or three or four or five or six per cent—your experience shows you what that will be?

A. Yes.

Q. So you know what that will be.

A. Yes.

Q. Couldn't that be used for the purpose of making a rate—that interest earned on that?

A. I don't see why it should.

The Referee: The question is whether or not it could.

A. Why, it could, I suppose.

Mr. Barker:

Q. Do you think that that would be unfair?

A. Yes, sir.

Q. That is because you figure all of this unearned premium reserve belongs to you?

A. Well, I don't figure that it all belongs to us because there is a liability against it.

[fol. 2010] Q. Well, we have counted that 25 per cent returned and 40 per cent for the expenditure in business. We have counted that, haven't we?

A. Yes, sir.

Q. Then the rest of it, there is no liability against it?

A. There is a liability for losses.

Q. But we have taken those out.

A. No, we haven't taken any losses out.

Q. Hasn't your experience shown you that 40 per cent will carry your business?

A. The expenses, yes sir.

Q. What will your losses be?

A. 55 per cent.

Q. That is, you mean to say that out of every $100 of insurance that you collect your experience shows you you have to pay $55 of that for losses?

A. Yes, sir.

Q. That covers quite a length of time in your experience?

A. Yes, sir.

Q. Isn't that an unreasonable and excessive loss ratio?

A. Yes, sir.

The Referee: Mr. Chapman, do I understand you to mean that your overhead expenses amounted to 40 per cent, your

fire loss or losses to 55 per cent, and your cancellations or premiums returned on cancellations to be 25 per cent?

A. Yes, sir, but the loss ratio and expense ratio is figured on net premiums with the cancellations taken out first.

The Referee: I see.

Mr. Barker:

Q. Now, your expense ratio is 42 per cent, you say?

A. Approximately that, yes.

[fol. 2011] Q. Do you consider that is an excessive and exorbitant expense ratio?

A. No, sir, I don't.

Q. Are you familiar with the fact that the mutuals, mutual companies, operate for less than 20 per cent expense ratio?

Mr. Folonie: Object to comparing it with mutual companies who do not do business on the agency method of business.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. You are familiar with that, are you not, Mr. Chapman?

A. Yes, sir.

Q. Familiar with the fact that reciprocals operate for less than 20 per cent expense ratio, are you not?

A. I don't know the percentage, but it is less than the stock companies.

Q. You are familiar with the fact that loan companies, in handling loans, going out and looking at a man's farm and walking all over it, having three men appraise its value, making out all the papers, delivering it to the man, operate for less than 6 per cent.

A. 6 per cent on what?

Q. The money loaned.

A. But not on the interest on the loan.

Q. I don't know. I asked you if you are familiar with the fact that they operate on 6 per cent of the money loaned.

A. Yes, I am familiar with that.

[fol. 2012] Q. Now, they go to more trouble, more papers, more detail, than you do, and it costs you 42 per cent?

A. 42 per cent on our premiums; not on the amount of liability.

Q. Well, your amount of liability, you wouldn't have any expense ratio, would you? It would be nil?

A. I don't understand that.

Q. Well, if you have a 42 per cent expense ratio on your premiums, your premiums represent a very small part of your liabilities, of course?

A. We have a 42 per cent expense ratio on the earned premiums. If we took the ratio of expenses to amount involved it would be a very different figure. The loan company that you speak of gets 6 per cent expense on the money loaned, and if they are lending $10,000 that is $600. If they figure 6 per cent—if they figured the percentage on the interest paid in on the loan it would come nearer being the figure that ours is.

Q. All right, let's see. Take a $5,000 dwelling house in Missouri. The premium on that would be about $25 would it not?

A. Yes, sir.

Q. So that if you figured your expense ratio on your risk of $5,000 it would be practically nil, wouldn't it?

A. Yes, sir.

Q. Now, you say that in case of cancellation before the agent collects his commission, before the agent collects the premium, you make the agent pay you for the time the policy has run, is that right?

A. Yes, sir.

[fol. 2013] Q. Don't you know, Mr. Chapman, that in many, many instances in your company—and you so report it—policies have run for 60, 90 and 120 days and at the end of that time cancelled off and neither you nor the agent received a cent for it?

A. That has been the experience in some cases, yes, sir.

Q. Then why did you tell Mr. Folonie this morning that invariably you make the agents pay that?

A. I didn't say invariably.

Q. Oh. One time out of a million, probably, you make him pay; is that what you mean?

A. No, sir.

Q. Greater percentage than that?

A. The greater percentage, he pays the earned premium for the lapsed time. In special instances when a man gives valid reasons why he has not been able to collect that reason—that premium, we may compromise with him or we may stand it all, but those are isolated cases.

Q. In case a loss occurs you would pay it, would you not?

A. We would have to pay it.

Mr. Folonie: You mean during the period the policy is in force?

Mr. Barker: Yes.

Q. Now, you recognize the fact that agents write insurance without collecting the premium at the time the policy is written, do you not?

A. Yes, sir.

Q. And that will run universally 60 days, will it not, in your company?

A. I don't know how long the agent—I wouldn't say it would, no.

Q. You wouldn't say it would. Now, in case of a cancellation that agent also returns part of his commission, does he not?

A. Yes, sir.

[fol. 2014] Q. Now, you report to the State of Missouri, I believe you told Mr. Folonie, that it costs you ⅛ of 1 per cent to handle your investments?

A. No, sir, I didn't say so.

Q. Well, do you?

A. No. That is the arbitrary figure that is used in determining the expense of investments.

Q. Well, do you use it?

A. We use it, yes, sir.

Q. You report it to the state?

A. Yes, sir.

Q. I just asked you that and I thought you said no.

A. I didn't understand your question, then.

Q. Now, then, you know that instead of it being ⅛ of 1 per cent it will run 3 or 4 per cent, won't it?

A. Yes, sir.

Q. And your purpose in holding it down is to add it to the underwriting expense to reduce your underwriting profit, isn't it?

A. My purpose in holding down the expense is to reduce the underwriting profit?

Q. That's right.

A. We can't hold it down. It is arbitrarily set and we have to use that figure.

Q. You charge arbitrarily ⅛ of 1 per cent for handling investments?

A. Yes.

Q. Let us suppose instead of ⅛ of 1 per cent it costs you 2 per cent. The underwriting activities pay the difference, don't they?

A. Yes.

Q. Your underwriting activities pay the difference, and that keeps your underwriting profit low, doesn't it?

A. Yes, sir.

Mr. Folonie: There is no evidence here that it is.

Mr Leahy: All stricken out.

[fol. 2015] Mr. Folonie: I want to object here.

The Referee: The objection will be heard.

Mr. Folonie: Your Honor, he has taken the hypothesis here that the gentleman says does not exist.

The Referee: You are objecting for that reason?

Mr. Folonie: Yes.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: He answered it fully.

The Referee: Proceed.

Mr. Barker:

Q. Now, then, when you go to pro rate among the different states your expense you don't pro rate ⅛ of 1 per cent but you pro rate your expenses, whatever they happen to be, do you not?

A. Yes, sir.

Q. So that the effect would be, then, Mr. Chapman, that if arbitrarily you adopt the 1/8 of 1 per cent for handling your investments and it actually costs you 3 per cent, the underwriting activities would pay the difference, would they not?

A. They do under the present method of accounting, yes, sir.

Q. And the reason you do that is to show a small underwriting profit, is it not?

A. That is not the reason, no.

Q. Well, tell me, then, why you take 1/8 of 1 per cent and charge that for handling your investments when you know it is not right?

A. Because that is the formula we are required to use.

[fol. 2016] Q. And that is your only answer, is it?

A. That is my only answer.

Q. And you know it costs you more than that, don't you?

A. I know it costs us less than that.

Q. Less than 1/8 of 1 per cent?

A. Yes, sir.

Mr. Hogsett: That illustrates the unfairness of the assumptions that General Barker has been predicating his questions on.

Mr. Barker: All right, we'll have an argument, now.

Mr. Hogsett: Wait a moment. I am making a motion to strike out the testimony given by this witness in answer to unfair questions by General Barker, assuming a state of facts to exist that there is no predicate in the evidence whatsoever for, namely this: the assumption that the investment expenses are as much as 2 or 3 per cent.

Mr. Barker: We will prove it.

Mr. Hogsett: Well, you haven't proven it. When the testimony of the witness on direct examination was that the investment expense was practically nil, and when the testimony just now is that it is less than 1/8 of 1 per cent of the mean invested assets, now, in the face of that, the undisputed evidence, so far at least, the general blandly assumes that it is as much as 2 or 3 per cent, and then tries to put the witness in the apparent attitude of using a less figure when he knows it is more, for the purpose of de-

creasing his profits. The unfairness of that is perfectly [fol. 2017] manifest and we move now to strike out the testimony of the witness in answer to the assumption of General Barker that the expenses of investments are as much as 2 or 3 per cent.

Mr. Barker: And probably won't let me ask any more questions?

Mr. Hogsett: That is a simple motion, you understand.

Mr. Barker: Not going to bar me from asking any other questions?

The Referee: No, not that far. The question has been on an assumption of fact that the witness says does not exist. Such questions carry with them by implication at least, and in this instance, since the objection has been made by an avowal—an intention on the part of the party asking the question to produce proof that those suppositions are in fact true. I take it that a hypothetical question is not necessarily confined by any means to the testimony of the particular witness who is being cross-examined, or, necessarily, by the testimony theretofore given, if the subsequent evidence is introduced tending to support the hypothesis assumed in the question; and for that reason the motion will be overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now, you understood Mr. Hogsett's objection, did you not, Mr. Chapman?

A. Yes, sir.

[fol. 2018] Q. Well, then, we will go ahead. Now, you told me that you can handle your investments for 1/8 of 1 per cent or less.

A. Yes, sir.

Q. How many investments do you have?

A. How many?

Q. Yes, sir, separate investments?

A. I don't know.

Q. A thousand?

A. No, I should say—I don't know the exact figure; a good deal less than a thousand.

Q. 800?

A. Between 200 and 300, I should say.

Q. 300 would be fair, you say you think?

A. Yes.

Q. All right. You have 300 separate investments. Now, what is the total in those investments?

A. Neighborhood of 6 million dollars.

Q. And you tell the commissioner that a person can handle 6 million dollars' worth of investments for 1/8 of 1 per cent?

A. I say that the actual cost of handling those, of the time in handling those, can't be determined; but it is practically nil.

Q. But it is less than 1/8 of 1 per cent?

A. Yes, sir.

Q. How much of your time is devoted to it?

A. I couldn't tell, sir.

Q. What is your salary?

Mr. Folonie: We object to salary as incompetent.

Mr. Barker: I want to figure this, in view of the statement of the witness. I want to show it costs more than that, from his own testimony.

[fol. 2019] The Witness: I have no objection to answering that question.

Mr. Barker: I knew there would be none—this is a small company.

The Referee: Objection overruled.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. What is your salary?

Mr. Leahy: Your Honor, that side remark is improper and we move to have it stricken out and counsel directed not to make these little side sallies about this being a small company and that he knew——

The Referee (interrupting): There being no jury present no great harm will be done by those remarks—and perhaps no benefit. There is nothing at all before the referee now. Proceed gentlemen.

Mr. Barker:

Q. Your salary is how much?
A. $21,000.
Q. What is the total of your other salaries in your office?
A. In the office?

Mr. Folonie: Yes. Entire staff?

Mr. Barker:

Q. Yes.
A. I don't recall, sir.
Q. Well, $21,000 covers that again?
A. Of the total salaries? That is my salary.
Q. I know, but $21,000 will cover them all?
A. No.
Q. $50,000 cover them all? 50, 75, 100,000—just guess at it for me.
A. I can't guess at the total staff salaries. I don't remember what they are.
[fol. 2020] Q. Well, would they be as much as $50,000 a year?
A. Yes, sir.
Q. In addition to your 21?
A. Yes. More than that.
Q. Well, 50 will be enough for my purpose. That is $71,000. Now, you rent your building, do you?
A. Yes, sir.
Q. What do you pay rent on that?
A. We are now paying $40,000.
Q. $40,000 a year. Now, then, your building is used for the purposes of investments, is it not?
A. Consideration of investments, yes, by the directors.
Q. The directors are paid a salary, are they?
A. Paid a fee.
Q. They use the building, do they?
A. Yes, sir.

Q. And their time is devoted to investments?
A. Yes, sir.
Q. You use the building and your time is devoted to investments?
A. Yes, sir.
Q. Now, then, that is $110,000. In your office alone. Now, do you tell the court that a loan company can handle investments for 1/8 of 1 per cent——

Mr. Leahy: That is mere argument. We object to it.
The Referee: I think that is purely argumentative.

(To which action and ruling of the referee, defendant by counsel then and there at the time duly excepted and still excepts.)

[fol. 2021] Mr. Barker:

Q. You know, do you not, that a loan company pays 1 per cent commission—loan?

Mr. Leahy: We object to that, Your Honor.
The Referee: He may answer.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't know.

Mr. Barker:

Q. You don't know what they pay?
A. No.
Q. Now, suppose you would divorce from your insurance business your investment business and you operated that singly and alone, as a business man can you tell the court what it would cost you to handle, year in and year out, six million dollars' worth of investments?
A. If I was doing nothing else?
Q. Yes.
A. No, I can't tell.
Q. It costs you now $7,500 a year to handle, at 1/8 of 1 per cent, 6 million dollars' worth of investments?

Mr. Folonie: We object, because he is trying to figure percentage of expense instead of figuring percentage of their mean invested assets. Object to it as misleading.

Mr. Barker: I am not trying to mislead you. I thought I made it clear.

The Referee: Read the question.

(Question read by the reporter.)

Mr. Barker:

Q. That is right, is it not?

A. It doesn't cost us that much.

[fol. 2022] Q. Well but if you figured it 1/8 of 1 per cent it would be that much, I mean, that $7,500?

A. That is approximately 1/8 of 1 per cent, but my time is not devoted entirely to handling investments; a very small part of it is.

Q. Well, now, you are getting a salary of $21,000 a year?

A. Yes, sir.

Q. 1/8 of 1 per cent for handling that business is only $7,500. That is only one-third of your salary alone, Mr. Chapman. Is that about right?

A. That is one-third of my salary.

Q. You devote about one-third of your time to it?

A. No, sir, I devote considerably less than that time.

Q. Your stenographers devote some time to it?

A. Very little.

Q. They have to write out and find out about these conditions and report to you?

A. No, the data is laid before me by brokers.

Q. By brokers?

A. Yes, sir.

Q. And then what do you do with the data?

A. I simply keep it on my desk until I have my monthly meeting of my directors.

Q. Then what do you do with it?

A. I submit the offerings to them for their consideration and tell them how much money I have to invest, and they select from that list of offerings the securities that I am to purchase, and I give the order to the broker; and when the securities are ready for delivery I go to the bank and accept them and put them in the box.

[fol. 2023] Q. Then what record is made in your office?

A. My cashier keeps a record of the number of the bonds, denominations and other details incident to those securities.

Q. The books are kept for that purpose?

A. Investment register.

Q. And then when the interest comes due how do you collect it?

A. A list of interest maturities is kept by the cashier and those coupons are cut and deposited.

Q. And the credit is entered on your books?

A. Yes, sir.

Q. Make a bookkeeping entry?

A. Yes, sir.

Q. Now, all of that, you think, can be done for $7,500?

A. I think for less than that.

Q. Can you separate it for me?

A. No, sir, because my duties are varied and only part of them applies to investments. My cashier's duties are manifold and only part of his time is devoted to investment records.

The Referee: What would be reasonably a fair compensation for a man of judgment and experience, and the qualifications generally suited to enable him to discharge the duties which you discharge with reference to investing the amount of money the investment of which you superintend, per annum?

A. I don't know, Your Honor, that I can answer that question, because the selection of the investments does not devolve upon me. It devolves upon the board of directors. I merely carry out their instructions in transmitting orders to brokers.

[fol. 2024] The Referee: Suppose you put it in this form: suppose that the duties devolving upon you from the insurance end of your business became sufficiently onerous to occupy your entire time and it became necessary to employ a reasonably competent man to do what you do with reference to the investment end of the company's business. What would be a reasonably fair annual salary to pay such a man, possessing the necessary qualifications for the discharge of those duties?

Mr. Folonie: Assuming a man had no other duties except that.

A. I should say that $5,000 would be a liberal salary.

Mr. Barker:

Q. You mean $5,000 would be the total expense of handling 6 million dollars of investments?

A. As I understood His Honor's question, it was the compensation to a man who would devote his time exclusively to the duties that my cashier and I now perform.

Q. He couldn't count six million dollars in a year, could he?

A. Yes, sir; he can count it in two hours.

Q. You never counted any such sum as that, did you?

A. Yes, sir; do it every year.

Q. Now, then, when you pro rate your expenses, however, you don't follow the 1/8 of 1 per cent, I understand you?

A. We use a figure produced by that 1/8 of 1 per cent.

Q. And you don't pro rate the actual expense of handling it, but this is an arbitrary charge, is that right?

A. Yes, sir.

[fol. 2025] Q. If it amounts to more than that then of course it would not be a proper allocation, would it?

A. It seems to me that any amount that could be determined, if it could be determined, would be a proper allocation. We use the 1/8 of 1 per cent because we think it is high and it is a formula we have been following at the direction of the New York, Massachusetts and Connecticut departments, and I think the Missouri department in past years. It was established long before my time and it is a formula we have always used, and I understand other companies use it.

Q. Well, now, your company, with 6 million dollars worth of investments, what would you say about a company with 75 million dollars' worth of investments? Charge more to handle them?

A. That would cost more, I should think.

Q. So that what might be right as to your company might no be right as to another company?

A. Yes, sir.

Q. So that in the end when you apportion all of your expenses you total both underwriting and investment expenses and put them all in, don't you?

A. Yes, sir.

Q. Regardless of what they are?

A. Yes, sir.

Q. And you don't follow the ⅛ of 1 per cent in apportioning expenses?

A. The investment expense goes in at ⅛ of 1 per cent of the mean invested assets.

Q. And that is charged to the underwriting activities?

A. Yes, sir.

[fol. 2026] Q. The underwriting activities pay for the investment expense?

A. Yes, sir.

Q. Now, do you think it fair for the underwriting activities to pay for the investment expense and not allow the underwriting activities to participate in the investment profits?

A. I don't think it is fair for the underwriting activities to pay the investment expense, but that is the method that has been followed—that it has been charged on. If that was allocated to the various states it would be a very small sum.

Q. Don't you believe, Mr. Chapman, that inasmuch as the underwriting activities do pay for the investment expense that they should participate in the investment earnings?

A. No, I think it should be deducted from the underwriting expenses.

Q. Now, then, in allocating expenses to the different states you do that in accordance with volume of business which they produce, I take it?

A. Yes, sir.

Q. Now, Mr. Chapman, suppose that an automobile manufacturer should require his agent to pay down, say $100, for a hundred cars during the season, and when they purchased the cars as they needed them they pay the balance, but he received in advance the $100 on each car. Now, as a business man, president of a large insurance corporation, what would you say—would you say that that $100 belonged to that automobile agency, or not?

A. The agent paid it to the manufacturer?

Q. Yes.

A. I should say it belonged to the manufacturer.

[fol. 2027] Q. You would say it belonged to the manufacturer?

A. Yes, sir.

Q. The manufacturer would figure that all in with his assets?

A. Yes, sir.

Q. Now, you figure, you told Mr. Folonie, your profit or loss on an incurred premium basis, do you?

A. Yes, sir.

Q. I mean on an earned premium basis?

A. Yes, sir.

Q. Now, an earned premium is always less, of course, than the written premium—during a given number of years?

A. On an ascending scale, yes, sir.

Q. Now, then, let's take this period in question, 1917 to '21, inclusive. Now, if at the beginning of '17 you had $100,000 in unearned premiums, you take for that five year period your earned premiums and add to your $100,000 to get your premium figure at the end of that time?

Mr. Folonie: May I have that read, please? I missed one part of it, so I have lost it.

(Question read by the reporter.)

The Referee: Add what to the $100,000? I don't understand your question, General. Add what to the $100,000?

Mr. Barker: He takes his earned premiums of '17, and I asked him if he took his written premiums, then, during the period and add that to the $100,000 to arrive at that earned premium result at the end of '21.

A. We have got to deduct our earned premiums at the end of the period.

[fol. 2028] Q. What you mean is, you add at the beginning and deduct at the end?

A. Yes, sir.

Q. All right. Now, let's see how that figures in this period. Suppose you have $100,000 worth of earned premiums at the beginning of 1917 and that your expense ratio is 42 per cent. You have paid $42,000 in expenses to get those premiums, have you not?

A. Yes, sir.

Q. And the state gets the advantage of that $42,000 which has been paid in other years, does it not?

A. I don't know just what you mean.

(Question read by the reporter.)

A. I don't know what you mean by the state getting the advantage of the $42,000.

Q. Well, here is what I mean: the $42,000 is paid prior to 1917, is it not?

A. Yes, sir.

Q. And in figuring from '17 to '21 you give the state the advantage of the payments which you made in those years?

A. Yes, sir.

Q. Now, at the end of 1921, let us assume that your unearned premiums are 1 million dollars instead of $100,000, as at the beginning. You have paid on that?

A. The unearned premiums?

Q. Yes.

A. The unearned premiums at the end of the period are 1 million dollars?

Q. Yes. You have paid all expenses on that, which amount to $420,000. And that carries over into the years to come?

A. Yes, sir.

Q. In other words, this period from '17 to '21 pays that $420,000 for those premiums which will not be earned until the years go by?

A. Yes, sir.

[fol. 2029] Q. And that is charged against the state in that period from '17 to '21, isn't it?

A. I don't know how it is charged against the state. I don't quite get that question.

Q. Well, the expenses are paid for all that business?

A. Yes, sir.

Q. And it is charged as expense from '17 to '21?

A. Yes, sir.

Q. Then it is charged against the state in that period?

A. Yes, sir.

Q. So the net result on an ascending scale of business would be that at the beginning with $100,000 of unearned premiums you give the state a credit for $42,000, which you paid to get it, and at the end of the five year period, '21, you have a million dollars in unearned premiums, on an ascending scale of business, which you have paid $420,000 for, expenses. That means that the state lost the difference between $42,000 which you gave them at the beginning and $420,000 which you charge them at the end, doesn't it?

A. It is not charged at the end. It is charged every year.

Q. Well, but it figures at the end as well as all paid?

A. Yes.

Q. Then the state would get the advantage of $42,000 and would have to pay $420,000, is that right?

A. I don't see how the state pays anything.

Q. You are figuring as a rate making body now. You give the state the benefit of $42,000 which you paid prior to '17, haven't you?

A. As expenses incurred, yes.

[fol. 2030] Q. Yes. Then you have paid $420,000 worth of expenses on this million dollars' worth of unearned premium which you have, that is charged against the state from '17 to '21, is it not?

A. Yes.

Q. So the net result is that the state gets the benefit on an ascending scale of business of the $42,000 which you have paid at the beginning of the period, and is charged with $420,000 expenses at the end of the period. That is right, isn't?

A. Yes, I would say that that was correct—in the way it is put.

Q. Therefore, on an ascending scale of business, the state would lose the difference between $42,000 and $420,000 in figuring that rate, wouldn't it?

Mr. Folonie: As compared with what?

Mr. Barker: You may interrogate this witness when I get through, Mr. Folonie.

Mr. Folonie: I think I will object to the question as not intelligible.

Mr. Barker: I am surprised that you haven't been objecting earlier. What is it now?

The Referee: What is your objection?

Mr. Folonie: My objection is that he seeks to make a comparison with something else and says that the state loses a certain amount involving a comparison with some other standard, and the other standard not stated. I assume he means a comparison with taking a written premium basis and paid basis as compared with the one he is assuming, but he hasn't said so. That is my objection; that he has not clearly indicated what the real purport of his question is.

[fol. 2031] The Referee: The question is not entirely clear to me.

Mr. Barker: I think if you will read the question it will be clear.

(Question read by the reporter.)

Mr. Barker: If the witness wants it illuminated I will illuminate it for him.

The Referee: When you say the state would lose, you mean that in the reports made to the state, some disadvantage would inure to the state by reason of the method of calculation?

Mr. Barker: Well, it would be some.

The Referee: Do you understand the question, Mr. Chapman?

The Witness: No, sir.

Mr. Barker: All right, we will start over.

Q. You figure it for me and then we can't have any trouble. Let us assume that at the beginning of 1917 the unearned premiums are $100,000. Mark that down.

(Witness complies.)

Q. Expenses are about 42 per cent, you told me, did you?
A. Yes.

Q. You pay $42,000 prior to that to get that unearned premium, do you?
A. Yes, sir.

Q. And you don't charge the state with the getting of that earned premium in this, do you?

Mr. Folonie: You say "earned premium."

Mr. Barker:

Q. Unearned premium.
A. That is what is paid to put that unearned premium on the books.

[fol. 2032] Q. And paid prior to '17?
A. Yes, sir.

Q. Therefore it is not charged from '17 to '21 against the State of Missouri, it already having been paid?
A. No, sir.

Q. Now, then, let us assume at the end of 1921 you have 1 million dollars unearned premium. Mark that down.

(Witness complies.)

Q. Now, on the same ratio of 42 per cent, how much are those expenses?

A. $420,000.

Q. Now, that is paid during the period from '17 to '21, is it?

A. Yes, sir.

Q. Now, you give the state at the beginning the advantage of $42,000 which you had paid prior to '17, don't you?

Mr. Folonie: Object to assuming it is an adv ntage. Object to the form of the question for that reason.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't get what the advantage the state gets in that is.

Mr. Barker:

Q. Well, the state is not charged, then, with the expenses you have paid for getting that $100,000?

A. Well, hasn't the state been charged with it?

Q. Yes, but in figuring, now, from '17 to '21 only?

A. Yes.

[fol. 2033] Q. From '17 to '21 it is not charged, is it?

A. The state, as you put it, would be charged with the expenses of acquiring that business during the period when it was acquired.

Q. That's right. So that from '17 to '21 the state gets the advantage of that money which you pay prior to that time, and is not charged with it, is it?

A. It is not charged with it from '17 to '21, no.

Q. That's right. Now, at the end of the time you have got 1 million dollars of unearned premiums and you have paid your expenses on that also, have you?

A. Yes, sir.

Q. You paid that, though, during the period from '17 to '21, didn't you?

A. Yes.

Q. And you get credit for those expenses paid during that period of time, don't you?

A. Yes, sir.